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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM460; Special Conditions No. 25-439-SC]

Special Conditions: Gulfstream Aerospace LP (GALP) Model G250 Airplane, Interaction of Systems and Structures

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace LP (GALP) Model G250 airplane. This airplane will have a novel or unusual design feature associated with a fly-by-wire (FBW) flight control system that governs the yaw and roll axes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 1, 2011. We must receive your comments by August 29, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM460, 1601 Lind Avenue, SW., Renton, Washington, 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM460. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2279; e-mail carl.niedermeyer@faa.gov; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 30, 2006, GALP applied for a type certificate for their new Model

G250 airplane. The G250 is an 8-10 passenger (19 maximum), twin-engine airplane with a maximum operating altitude of 45,000 feet and a range of approximately 3,400 nautical miles. Airplane dimensions are 61.69-foot wing span, 66.6-foot overall length, and 20.8-foot tail height. Maximum takeoff weight is 39,600 pounds and maximum landing weight 32,700 pounds. Maximum cruise speed is mach 0.85, dive speed is mach 0.92. The avionics suite will be the Rockwell Collins Pro Line Fusion.

Type Certification Basis

Under the provisions of 14 CFR 21.17, GALP must show that the Model G250 airplane meets the applicable provisions of part 25 as amended by Amendments 25-1 through 25-117.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model G250 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model G250 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model G250 will incorporate the following novel or unusual design features:

The GALP Model G250 airplane has an FBW flight control system that governs the yaw and roll axes. The current rules are inadequate for considering the effects on structural

performance of this system and its failures.

Discussion

Active flight control systems are capable of providing automatic responses to inputs from sources other than the pilots. Active flight control systems have been expanded in function, effectiveness, and reliability to the point that FBW flight controls, without a manual backup system to override FBW system failures, are becoming standard equipment. As a result of these advancements in flight controls technology, the current safety standards contained in Title 14 Code of Federal Regulations (14 CFR) part 25 do not provide an adequate basis to address an acceptable level of safety for airplanes so equipped. Instead, certification of these systems has been achieved by issuance of special conditions under the provisions of § 21.16.

For example, stability augmentation systems (SASs), and to a lesser extent load alleviation systems (LASs), have been used on transport airplanes for many years. Past approvals of these systems were based on individual findings of equivalent level of safety with existing rules and on special conditions. Advisory Circular 25.672–1 was issued on November 11, 1983, to provide an equivalent means of compliance under the provisions of § 21.21(b)(1) for SAS, LAS, and flutter control systems (FCSs), another type of active control system.

Although autopilots are also considered active control systems, their control authority historically has been limited such that the consequences of system failures could be readily counteracted by the pilot. Now, autopilot functions are integrated into the primary flight controls and are given sufficient control authority to maneuver the airplane to its structural design limits. This advanced technology, with its expanded authority, requires a new approach to account for the interaction of control systems and structures.

The usual deterministic approach to defining the loads envelope contained in 14 CFR part 25 does not fully account for system effectiveness and system reliability. These automatic systems may be inoperative or may operate in a degraded mode with less than full-system authority. Therefore, it is necessary to determine the structural factors of safety and operating margins such that the joint probability of structural failures, due to application of loads during system malfunctions, is not greater than that found in airplanes equipped with earlier-technology

control systems. To achieve this objective, it is necessary to define the failure conditions with their associated frequency of occurrence to determine the structural factors of safety and operating margins that will ensure an acceptable level of safety.

Earlier automatic control systems usually provided two states: fully functioning, or totally inoperative. These conditions were readily detected by the flight crew. The new active flight control systems have failure modes that allow the system to function in a degraded mode without full authority. These degraded modes are not readily detectable by the flightcrew, therefore monitoring systems are required on these new systems to provide an annunciation of degraded system capability.

In these special conditions, and in the current standards and regulations, the term “any” is used. Use of this term has traditionally been understood to require the applicant to address all items covered by the term, rather than addressing only a portion of the items. The use of the term “any” in these special conditions continues this traditional understanding.

Applicability

As discussed above, these special conditions are applicable to the GALP Model G250 airplane. Should GALP apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the GALP Model G250 airplane. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special

conditions are issued as part of the type-certification basis for the GALP Model G250 airplane.

Interaction of Systems and Structures

For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of Subparts C and D of 14 CFR part 25.

The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, fuel management systems, and other systems that either directly or, as a result of failure or malfunction, affect structural performance. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

1. The criteria defined herein only address the direct structural consequences of the system responses and performance. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are only applicable to structure the failure of which could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements, when operating in the system degraded or inoperative mode, are not provided in these special conditions.

2. Depending upon the specific characteristics of the airplane, additional criteria may be required that go beyond the criteria provided in these special conditions to demonstrate the capability of the airplane to meet other realistic conditions such as alternative gust or maneuver descriptions for an airplane equipped with a load-alleviation system.

3. The following definitions are applicable to these special conditions.

(a) *Structural performance*: Capability of the airplane to meet the structural requirements of 14 CFR part 25.

(b) *Flight limitations*: Limitations that can be applied to the airplane flight conditions following a detectable in-flight occurrence and that are included in the airplane flight manual (AFM; e.g., speed limitations, avoidance of severe weather conditions, etc.).

(c) *Operational limitations:* Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., fuel, payload, and Master Minimum Equipment List limitations).

(d) *Probabilistic terms:* The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

(e) *Failure condition:* This term is the same as that used in § 25.1309. However, these special conditions apply only to system-failure conditions that affect the structural performance of the airplane (e.g., system-failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

Effects of Systems on Structures

The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

4. *System fully operative.* With the system fully operative, the following apply:

(a) Limit loads must be derived in all normal operating configurations of the system from all the limit load conditions specified in 14 CFR part 25, subpart C (or used in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant changes in control-surface limits, rate of displacement of control surface, thresholds, or any other system nonlinearities must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(b) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system

presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

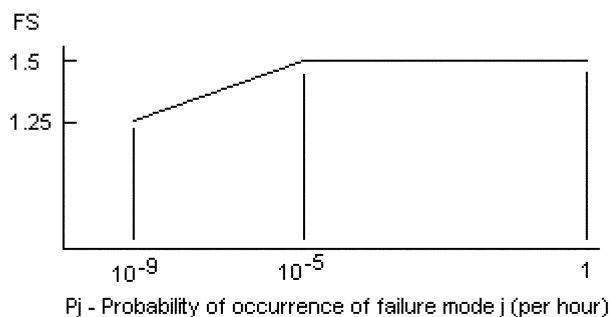
(c) The airplane must meet the aeroelastic stability requirements of § 25.629.

5. *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(a) At the time of occurrence. Starting from 1-g level-flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after the failure.

(1) For static-strength substantiation, these loads, multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure, are ultimate loads to be considered for design. The factor of safety is defined in Figure 1.

Figure 1: Factor of safety at the time of occurrence



(2) For residual strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in paragraph 5(a)(1) of these special conditions. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(3) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond V_C/M_C , freedom from aeroelastic instability must be shown to increased speeds so that the margins intended by § 25.629(b)(2) are maintained.

(4) Failures of the system that result in forced structural vibrations

(oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(b) For the continuation of the flight. For the airplane in the system-failed state, and considering any appropriate reconfiguration and flight limitations, the following apply:

(1) The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C (or the speed limitation prescribed for the remainder of the flight) must be determined:

(A) The limit symmetrical maneuvering conditions specified in §§ 25.331 and 25.345.

(B) The limit gust and turbulence conditions specified in §§ 25.341 and 25.345.

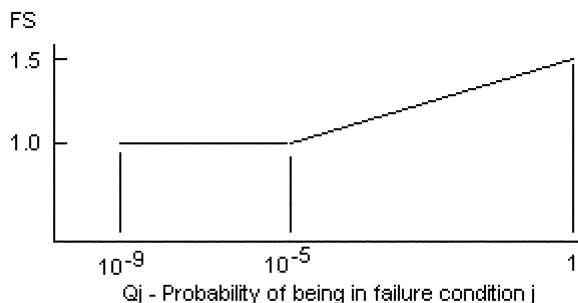
(C) The limit rolling conditions specified in § 25.349, and the limit unsymmetrical conditions specified in §§ 25.367, and 25.427(b) and (c).

(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in §§ 25.473 and 25.491.

(2) For static-strength substantiation, each part of the structure must be able to withstand the loads in paragraph 5(b)(1) of these special conditions, multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2: Factor of safety for continuation of flight



$$Q_j = (T_j)(P_j)$$

Where:

Q_j = Probability of being in failure condition j

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be

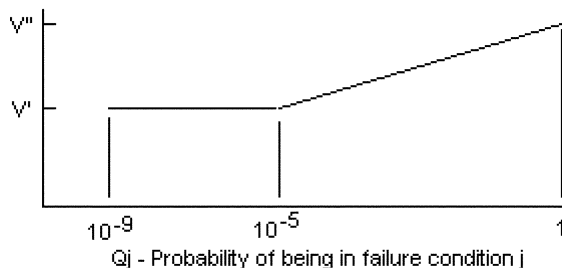
applied to all limit load conditions specified in 14 CFR part 25, subpart C.

(3) For residual-strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph 5(b)(2) of these special conditions. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(4) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(5) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter-clearance speeds V' and V'' may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3: Clearance speed



V' = Clearance speed as defined by § 25.629(b)(2).

V'' = Clearance speed as defined by § 25.629(b)(1).

$$Q_j = (T_j)(P_j)$$

Where:

Q_j = Probability of being in failure condition j

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V'' .

(6) Freedom from aeroelastic instability must also be shown up to V' , in Figure 3 above, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(c) Consideration of certain failure conditions may be required by other sections of 14 CFR part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9} , criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

Failure Indications

6. For system-failure detection and indication, the following apply:

(a) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by 14 CFR part 25, or which significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of

these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections; and electronic components may use daily checks, in lieu of detection-and-indication systems to achieve the objective of this requirement. These inspections should be Certification Maintenance Requirements (CMR; see Advisory Circular 25.19). These CMRs must be limited to components that are not readily detectable by normal detection-and-indication systems, and where service history shows that inspections will provide an adequate level of safety.

(b) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the

airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of 14 CFR part 25, subpart C below 1.25, or flutter margins below V", must be signaled to the crew during flight with required crew action specified in the AFM.

7. Dispatch with known failure conditions. If the airplane is to be dispatched in a known system-failure condition that affects structural performance, or that affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met, including the provisions described in these special conditions in paragraph 4 for the dispatched condition and paragraph 5 for subsequent failures. Expected operational limitations may be taken into account in establishing Pj as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state, and then subsequently encountering limit load conditions, is extremely improbable. No reduction in these safety margins is allowed if the subsequent system-failure rate is greater than 1E-3 per hour.

Issued in Renton, Washington, on July 1, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011-17533 Filed 7-12-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM461; Special Conditions No. 25-440-SC]

Special Conditions; Gulfstream Aerospace LP (GALP) Model G250 Airplane, Design Roll-Maneuver Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace LP (GALP) Model G250 airplane. This airplane will have novel or unusual design features associated with electronic flight controls as they relate to design roll-maneuver requirements. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 1, 2011. We must receive your comments by August 29, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM461, 1601 Lind Avenue, SW., Renton, Washington 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM461. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2279; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include

supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 30, 2006, GALP applied for a type certificate for their new Model G250 airplane. The G250 is an 8-10 passenger (19 maximum), twin-engine airplane with a maximum operating altitude of 45,000 feet and a range of approximately 3,400 nautical miles. Airplane dimensions are 61.69-foot wing span, 66.6-foot overall length, and 20.8-foot tail height. Maximum takeoff weight is 39,600 pounds and maximum landing weight 32,700 pounds. Maximum cruise speed is mach 0.85, dive speed is mach 0.92. The avionics suite will be the Rockwell Collins Pro Line Fusion.

Type Certification Basis

Under the provisions of 14 CFR 21.17, GALP must show that the Model G250 airplane meets the applicable provisions of part 25 as amended by Amendments 25-1 through 25-117.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model G250 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special

conditions, the Model G250 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the “Noise Control Act of 1972.”

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model G250 airplane will incorporate the following novel or unusual design features:

The Model G250 airplane is equipped with an electronic flight control system that provides control through the pilot inputs to the flight computer. This novel design feature is not covered in the current roll-maneuver airworthiness regulations of § 25.349(a). The current regulations do not address any nonlinearities or other effects upon roll control that may be caused by electronic flight controls. Therefore, special conditions are necessary to establish appropriate design standards for the GALP Model G250 airplane type design.

Discussion

The GALP Model G250 airplane is equipped with an electronic spoiler-control system and a mechanical aileron-control system that provide roll control of the aircraft through pilot inputs. An electronic control unit operates the roll spoilers to assist the ailerons in roll control of the aircraft. Current part 25 airworthiness regulations account for control laws for which lateral control-surface deflection is proportional to control-stick deflection. They do not address any nonlinearities or other effects on roll-control-surface actuation that may be caused by electronic flight controls. Since this type of system may affect flight loads, and therefore the structural capability of the airplane, specific regulations are needed to address these effects.

These special conditions differ from current requirements in that they require roll maneuvers to result from defined movements of the cockpit roll control, as opposed to defined aileron deflections. These special conditions require an additional load condition at design maneuvering speed V_A , in which the cockpit roll control is returned to neutral following the initial roll input.

These special conditions are limited to the roll axis only. Special conditions are no longer needed for the yaw axis because § 25.351 was revised at

Amendment 25–91 to take into account the effects of an electronic flight control system for this control axis.

Applicability

As discussed above, these special conditions are applicable to the GALP Model G250 airplane. Should GALP apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the GALP Model G250 airplane. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for GALP Model G250 airplane.

The following conditions, speeds, and cockpit roll-control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero, and of two-thirds of the positive maneuvering factor used in the design. In determining the resulting control-surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b):

In lieu of compliance with § 25.349(a):

1. Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated for airplanes with engines or other weight concentrations outboard of the fuselage. For the angular-acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time-history investigation of the maneuver.

2. At V_A , sudden movement of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

3. At design cruising speed V_C , the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in Special Condition 2, above.

4. At design diving speed V_D , the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one third of that obtained in Special Condition 2, above.

Issued in Renton, Washington, on July 1, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–17534 Filed 7–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738 and 740

[Docket No. 110525299–1322–01]

RIN 0694–AF27

Addition of the New State of the Republic of South Sudan to the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to add controls on exports and reexports of U.S.-origin dual-use items to a new nation, the Republic of South Sudan. In January 2011, a referendum was held in the region of Southern Sudan to determine whether that region would remain part of Sudan or become a separate, independent nation. On February 7, 2011, the referendum commission announced that the region of Southern Sudan had voted to become a separate nation, effective July 9, 2011. On February 7, 2011, recognizing this historic milestone in the implementation of the Comprehensive Peace Agreement (CPA), President Obama announced the intention of the United States to formally recognize the Republic of South Sudan as a sovereign state in July, 2011.

BIS is therefore amending the EAR to reflect the July 9, 2011 formal

recognition by adding the new nation, the Republic of South Sudan, to the Commerce Country Chart and including it in Country Group B, which will render the destination eligible for certain export and reexport License Exceptions. The controls that continue to apply to “Sudan” under the EAR will not apply to the Republic of South Sudan.

DATES: This rule is effective July 9, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Kramer, Foreign Policy Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3241, or E-mail: Susan.Kramer@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Transition to the New and Independent State of the Republic of South Sudan

The Republic of the Sudan (“Sudan”), referred to as “Sudan” in the EAR, was designated by the Secretary of State as a state sponsor of terrorism under U.S. law on August 12, 1993 (58 FR 52523, Oct. 8, 1993). On November 3, 1997, the President issued Executive Order (E.O.) 13067 (Blocking Sudanese Government Property and Prohibiting Transactions with Sudan), imposing comprehensive economic sanctions against Sudan because of the policies and actions of the Government of Sudan, including its continued support for international terrorism.

Consistent with the state sponsor of terrorism designation, the Department of Commerce imposed anti-terrorism controls on Sudan under the authority of Section 6 of the Export Administration Act of 1979, as amended (EAA). Specifically, Section 742.10 of the EAR restricts the export or reexport to Sudan of most items subject to the EAR that are listed on the Commerce Control List (CCL).

On January 9, 2005, the Government of the Republic of the Sudan and the Sudan People’s Liberation Movement signed the Comprehensive Peace Agreement (CPA) ending the 22-year civil war, and in October, 2006, pursuant to E.O. 13412 the regional government of Southern Sudan was excluded from the definition of the “Government of Sudan” set forth in E.O. 13067, consistent with Sec. 8(e) of the Darfur Peace and Accountability Act of 2006.

Pursuant to the constitution developed under the CPA, in January 2011, a referendum was held in the region of Southern Sudan to determine

whether that region would remain part of Sudan or become a separate, independent nation. On February 7, 2011, the referendum commission announced that the region of Southern Sudan had voted to become a separate nation, effective July 9, 2011.

Recognizing this historic milestone in the implementation of the CPA, on February 7, 2011, President Obama announced the intention of the United States to formally recognize the Republic of South Sudan as a sovereign state. BIS is therefore amending the EAR to reflect this formal recognition as of July 9, 2011, by adding the new nation of the Republic of South Sudan to the Commerce Country Chart and including the new nation as part of Country Group B, which will render the destination eligible for certain export and reexport License Exceptions. The controls that continue to apply to “Sudan” under the EAR will not apply to the Republic of South Sudan. Through this amendment, BIS imposes appropriate export control requirements for U.S.-origin dual-use exports and reexports to the new nation.

Amendments to the EAR To Add the Republic of South Sudan

This rule adds the Republic of South Sudan to the Commerce Country Chart in Supplement No. 1 to Part 738 of the EAR and adds appropriate “X” symbols denoting license requirements implementing these controls for the new country. It also adds the new country to Country Group B in Supplement No. 1 to Part 740 of the EAR. Country Group B includes a wide range of countries raising relatively few national security concerns. Countries in Country Group B are eligible for several License Exceptions not available for exports or reexports to countries in Country Groups D or E. The EAR will now list two countries with “Sudan” in their names: the Republic of the Sudan, referred to as “Sudan” in the EAR, the capital city of which is Khartoum, and the Republic of South Sudan, the capital of which is expected to be Juba. With the publication of this rule, BIS will require a license for the export or reexport to the Republic of South Sudan of items controlled unilaterally for regional stability and crime control reasons, and items controlled by the multilateral export control regimes (Australia Group, Wassenaar Arrangement, Chemical/Biological Weapons Conventions, Nuclear Suppliers Group, Missile Technology Control Regime). Other reasons for control under the EAR also may apply.

This rule does not change the existing license requirements or licensing policy

for exports and reexports of items to any other country under the EAR.

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 16, 2010 (75 FR 50681, August 16, 2010), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

2. Notwithstanding any other provisions of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the PRA. This collection has been approved by the Office of Management and Budget under control number 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to 5 U.S.C. 553(a)(1), the provisions of the Administrative Procedure Act requiring notice of

proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). This final rule implements the United States new policy to recognize the new and independent state of the Republic of South Sudan as announced by the President. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Therefore, this regulation is issued in final form. In addition, the Department finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the reasons provided above. Accordingly, this regulation is made effective immediately upon publication.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 738 and 740 of the EAR (15 CFR parts 730–774) are amended as follows:

PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR Part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

Supplement No. 1 to Part 738—[Amended]

■ 2. Supplement No. 1 to part 738—Commerce Country Chart—is amended

■ a. By adding in alphabetical order the “Country” “South Sudan, Republic of”; and

■ b. By adding for “South Sudan, Republic of” an “X” in columns “CB1”, “CB2”, “NP1”, “NS1”, “NS2”, “MT1”, “RS1”, “RS2”, “CC1” and “CC3”.

PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

■ 4. Supplement No. 1 to Part 740—Country Groups—is amended by adding in alphabetical order “South Sudan, Republic of” to “Country Group B”.

Dated: July 6, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–17607 Filed 7–8–11; 4:15 pm]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AD23

Agricultural Commodity Definition

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is charged with proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The Dodd-Frank Act, which amends the Commodity Exchange Act (“CEA” or “Act”), includes provisions applicable to “a swap in an agricultural commodity (as defined by the [CFTC]).” Neither Congress nor the CFTC has previously defined that term for purposes of the CEA or CFTC regulations. On October 26, 2010, the Commission requested comment on a proposed definition. After reviewing the comments submitted in response to the proposed definition, the Commission has determined to issue these final rules in essentially the same form as originally proposed, subject to a minor revision to the commodity-based index provision.

DATES: *Effective Date*—September 12, 2011.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Part I—Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹ Title VII of the Dodd-Frank Act² amended the CEA³ to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission’s rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission’s oversight.

The Dodd-Frank Act includes provisions applicable to “a swap in an agricultural commodity (as defined by the [CFTC]).” Neither Congress nor the CFTC has previously defined “agricultural commodity” for purposes of the CEA or CFTC regulations. On October 26, 2010, the Commission issued a notice of proposed rulemaking requesting comment on a proposed definition of agricultural commodity (the “NPRM”).⁴ After reviewing the comments submitted in response to the proposed definition,⁵ the Commission has determined to issue this final definition in essentially the same form as originally proposed, subject to a minor revision to the commodity-based index provision, for purposes of the CEA and Commission regulations.

¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

² Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the “Wall Street Transparency and Accountability Act of 2010.”

³ 7 U.S.C. 1 *et seq.*

⁴ 75 FR 65586, Oct. 26, 2010.

⁵ Those comments are available on the Commission’s Web site at: <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=868>.

A. Statutory Framework—"Agricultural Commodity"

1. Pre Dodd-Frank Act

For a detailed discussion of the pre Dodd-Frank statutory history relating to the term agricultural commodity, please review the NPRM at 75 FR 65586–65587.

2. The Dodd-Frank Act

In addition to deleting two existing CEA provisions that referenced agricultural commodities,⁶ the Dodd-Frank Act contains several new provisions relating to agricultural commodities. Section 721(a)(21) of the Dodd-Frank Act adds a new section 1a(47) to the CEA defining the term "swap." As part of the definition, clause (iii) of section 1a(47)(A) provides that a swap includes "any agreement, contract, or transaction commonly known as * * * an agricultural swap. * * *" ⁷

Section 723(c)(3)(A) of the Dodd-Frank Act, which is a free-standing provision that does not amend the CEA, contains a general rule whereby, except as provided in section 723(c)(3)(B), "no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the [CFTC])." Section 723(c)(3)(B) provides that a swap in an agricultural commodity may be permitted pursuant to the Commission's exemptive authority under CEA section 4(c), "or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the [CFTC] to allow swaps under such terms and conditions as the Commission shall prescribe."

Section 733 of the Dodd-Frank Act adds a new section 5h to the CEA that governs the registration and regulation of swap execution facilities. New CEA section 5h(b)(2) provides that a swap execution facility "may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe."

Section 737 of the Dodd-Frank Act amends CEA section 4a and specifically directs the Commission to adopt position limits for futures, DCM-traded options, and swaps that are economically equivalent to futures and exchange-traded options for physical

commodities other than excluded commodities—that is, exempt and agricultural commodities. Section 737 also sets timeframes for the adoption of such position limits for both exempt and agricultural commodities.

B. Regulatory Framework—"Agricultural Commodity"

For a detailed discussion of the history surrounding the Commission's regulatory framework related to the term agricultural commodity, please review the NPRM at 75 FR 65588–65589. Under current regulations, the term agricultural commodity is significant primarily for parts 32 and 35.⁸ The final definition is not anticipated to have any significant substantive impact outside of those rules.

In relation to parts 32 (dealing with commodity options) and 35 (dealing with swaps), the Commission, in a separate proposed rulemaking, has proposed (1) to treat all commodity options that fall within the Dodd-Frank definition of swap (including options on either agricultural or non-agricultural commodities) the same as any other swap, thereby doing away with the need to distinguish between an agricultural commodity and any other type of commodity for the purpose of identifying the applicable options rules, and (2) to treat swaps in an agricultural commodity the same as any other swap, thereby doing away with the need to distinguish between an agricultural commodity and any other type of commodity for the purpose of identifying the applicable swaps rules.⁹ The definition will also inform the Commission's planned rulemaking addressing speculative position limits on both agricultural and exempt commodities.¹⁰

⁸ 17 CFR part 32 and 17 CFR part 35.

⁹ The proposal to treat agricultural swaps the same as swaps in other commodities was issued following an advance notice of proposed rulemaking ("ANPRM") that specifically asked whether swaps in an agricultural commodity should be treated any differently than other swaps. See 75 FR 59666, Sept. 28, 2010. The overwhelming majority of the comments supported adopting a rule that would treat swaps in an agricultural commodity the same as all other swaps, and the proposed agricultural swaps rules that followed the ANPRM so provide. (See: Commodity Options and Agricultural Swaps, 76 FR 6095, February 3, 2011). If the final agricultural swaps rules should reverse course and prohibit or limit agricultural swaps, the Commission will take appropriate action to address any impact such rule change might have with respect to the definition set out herein.

¹⁰ See § 737(a) of the Dodd-Frank Act; see also Position Limits for Derivatives, 76 FR 4752, Jan. 26, 2011.

Part II—Summary of Comments; Commission Response to Comments

As noted above, on October 26, 2010 the Commission published for comment a notice of proposed rulemaking that proposed a definition of "agricultural commodity" for purposes of the Commodity Exchange Act and Commission regulations.¹¹ The NPRM proposed a four category definition, including:

1. The enumerated commodities listed in section 1a of the CEA, including such things as wheat, cotton, corn, the soybean complex, livestock, etc.;

2. A general operational definition that covers: "All other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed, or natural fiber;"

3. A catch-all category for commodities that would generally be recognized as agricultural in nature, but which do not fit within the general operational definition. In addition to the specified commodities named in category three (tobacco and the products of horticulture), category three would also include other commodities that, in future, would be classified as "agricultural commodities" as a result of Commission action: "Tobacco, products of horticulture, and such other commodities used or consumed by animals or humans as the Commission may by rule, regulation, or order designate after notice and opportunity for hearing;" and

4. Finally, a provision applicable to: "Commodity-based contracts based wholly or principally on a single underlying agricultural commodity."

In response to the NPRM, the Commission received twelve formal comment letters¹² representing a broad range of interests, including producers, merchants, swap dealers, commodity funds, futures industry organizations, academics, and policy organizations. In particular, comment letters were received from the following persons or entities: The Agricultural Swaps Working Group ("Ag Swaps Working Group"), comprised of financial institutions that provide risk management and investment products

¹¹ 75 FR 65586, Oct. 26, 2010.

¹² The comment file also includes records of discussions with three external parties (Land O'Lakes, Inc., a mixed group of agricultural and academic interests, and an agricultural risk manager from Kansas). At those meetings and/or phone calls, issues tangential to the agricultural commodity definition rulemaking were discussed between visitors and Commission representatives.

⁶ Pre Dodd Frank CEA sections 2(g) and 5a(b)(2)(F).

⁷ See new CEA section 1a(47)(A)(iii)(XX) as added by section 721(a)(21) of the Dodd-Frank Act.

to agricultural end users; BOK Financial (“BOK”); Better Markets, Inc. (“Better Markets”); Commodity Markets Council (“CMC”); Dairy Farmers of America, Inc. (“DFA”); the Gavlion Group, LLC (“Gavlion”); Institute for Agriculture and Trade Policy (“IATP”); CME Group, Inc. (“CME Group”); Minneapolis Grain Exchange (“MGEX”); National Council of Farmer Cooperatives (“NCFC”); National Grain and Feed Association (“NGFA”); and Michael Greenberger (“Professor Greenberger”), a professor from the University of Maryland Law School. In addition, on May 4, 2011, the Commission re-opened the comment period on several of the Dodd-Frank rulemakings, including the proposed agricultural commodity definition, to June 3, 2011.¹³ Of the additional comments received, three specifically addressed substantive concerns related to the proposed agricultural commodity definition—one letter from Chris Barnard, discussed below; one letter from the National Milk Producers Federation (“NMPF”), generally supporting the proposed definition; and one letter from MGEX, reiterating the arguments made in its earlier comments.¹⁴

With minor variations discussed below, the majority of commenters supported the definition of agricultural commodity as proposed. The following statement from the NGFA is representative:

The NGFA is supportive of the Commission’s efforts to define the term “agricultural commodity” for purposes of implementing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Generally, we believe the proposed rule takes a straightforward and common-sense approach to the issue and we have no current objection to the categorization of various agricultural commodities as detailed in the proposed rule.

In response to the Commission’s questions, the NGFA at this time is not aware of additional commodities that should be included in the definition, though they may not fit neatly into the proposed rule; nor are we aware of commodities that do fit the

proposed definition but should not be included. However, to accommodate situations that could arise in the future as new products are developed, the NGFA agrees that it would be prudent for the Commission to maintain some flexibility to consider or reconsider the status of any particular commodity as questions may arise in the context of specific markets or transactions.¹⁵

Many of the commenters specifically supported the fact that the proposed definition excludes biofuels.¹⁶ In addition, several commenters further noted the appropriateness of the definition in a regulatory regime where the Commission may decide to treat agricultural swaps as it does all other swaps.¹⁷

General support for the proposed definition; request for clarification on category two. Several commenters offered their general support for the definition as proposed, requesting only that the Commission clarify in any final rule that the second category of the agricultural commodity definition is self-effectuating and will encompass commodities that are now, or in the future may be, subject to swaps, futures, and options trading, without the need for additional CFTC action.¹⁸ These commenters suggested that such clarification would be consistent with Congress’ definition of “commodity” in the CEA, which includes certain enumerated commodities and “all other goods and articles, * * * and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.”¹⁹

In response to this request, the Commission wishes to clarify that the general operational definition found in the second category is self-executing and will encompass commodities that are now, or in the future may become subject to swaps, futures, and options trading, without the need for additional CFTC action. In this regard, the rule defines those commodities that are agricultural commodities. It does not matter whether futures, swaps, or options are being traded in the commodity—either now or in the future.

Request for consideration of public comment regarding the classification of new commodities. Other commenters asked that the Commission provide a means for the public to comment upon

and appeal any Commission decision to include or exclude a particular commodity from the list of agricultural commodities under any category of the definition. As proposed, such a comment and appeal process is contemplated only for commodities that may fall under category three of the Commission’s definition. In particular, subparagraph three of the agricultural commodity definition would allow the Commission to designate any other commodity used or consumed by animals or humans to be an agricultural commodity “by rule, regulation or order * * * after notice and opportunity for hearing.”²⁰ CMC asked for a clarification or expansion of this process:

We therefore urge the Commission to provide for an appeals process for new instruments. To elaborate, we request that a consistent process and time period be instated for appealing a CFTC decision to include or exclude a particular commodity from the list of agricultural commodities. We acknowledge that the CFTC in its [NPRM] has made a provision for public hearings for Category 3 agricultural commodities, but we request that a process for public comments and appeals be made broadly available in the context of including or excluding an agricultural commodity under any category of the definition.²¹

On this topic, NGFA commented that in order to accommodate situations that could arise in the future as new products are developed, it would be prudent for the Commission to maintain some flexibility to consider or reconsider the status of any particular commodity as questions may arise in the context of specific markets or transactions.

In considering these comments, the Commission has determined that the proposed definition, in conjunction with the Commission’s existing rules, already accommodates any concerns raised. With respect to commodities already listed in categories one or two, the NPRM that preceded these final rules provided an opportunity to question or challenge the inclusion or exclusion of any commodity listed in those categories. With respect to commodities not covered by the first two categories, category three of the proposed definition permits the Commission to designate any particular commodity as an “agricultural commodity,” but only after notice and an opportunity for hearing. Therefore, any time the Commission wishes to designate a particular commodity as an “agricultural commodity,” it must

¹³ See 76 FR 25274, May 4, 2011.

¹⁴ Illustrated by the following quote from the NMPF letter, the majority of the comments filed for the June 3, 2011 deadline addressed issues outside of the scope of the agricultural commodity definition; e.g. end user concerns, cooperative associations, and the general regulatory regime for swaps:

NMPF agrees that the proposed rule provides a reasonable definition of “agricultural commodity”, with respect to milk, dairy products, and common dairy feedstuffs.

However, this agreement must be seen in the context of our concerns about the potential over-regulation of farmers, farmer cooperative associations, and other commercial end users, including small and limited resource farmers.

See letter from NMPF.

¹⁵ See letter from NGFA.

¹⁶ See, e.g., letters from Gavlion, IATP, and the Ag Swaps Working Group.

¹⁷ In fact, the Commission has recently proposed to treat agricultural swaps the same as any other swap: See Commodity Options and Agricultural Swaps, 75 FR 6095, Feb. 3, 2011.

¹⁸ See, e.g., letters from CME Group, the Ag Swap Working Group, Gavlion, and DFA.

¹⁹ See CEA section 1a(4).

²⁰ See NPRM at 75 FR 65586 at 65593, Oct. 26, 2010.

²¹ See letter from CMC.

follow the procedures attendant to a normal notice and comment rulemaking (*i.e.*, issuing a notice of proposed rulemaking, allowing a comment period, and then issuing a final rule or order). In addition, any action by the Commission to remove a commodity from the definition would constitute a regulatory amendment that would similarly require a notice and comment rulemaking.

To the extent interested parties want to request that the Commission amend or add to the definition on their own initiative, they may submit a petition for issuance, amendment, or repeal of any rule pursuant to Commission regulation 13.2.

New or innovative commodity products. While generally supportive of the proposed definition, a comment letter from IATP expressed concern with respect to the commercial commodification of currently experimental commodities, "It perhaps goes without saying that the modification of traditional commodities by synthetic biology and other nanotechnologies will pose many and complex regulatory challenges to protect the public interest, should these commodities be traded under contracts subject to CFTC rules."²²

The Commission believes that categories two and three of the definition, as proposed, appropriately provide for the inclusion of new or innovative commodities within the definition of "agricultural commodity"—should such a determination become necessary.²³ These "new" commodities will likely fall under category two of the agricultural commodity definition as being "used primarily for human food, shelter, animal feed or natural fiber." And if they do not fall under category two, the Commission may use category three to issue a rule or order labeling them as agricultural commodities.

Commodity-based indexes. Several commenters focused on subparagraph four of the proposed definition, which would include "commodity-based contracts based wholly or principally on a single underlying agricultural commodity."²⁴ MGEX commented that subparagraph four should be withdrawn altogether, arguing that cash-settled and electronically traded contracts on indexes (such as contracts on MGEX's

various wheat, corn, and soybean cash-bid indexes) should remain outside of the definition of agricultural commodity.²⁵

The NCFC commented that, without information on the practical effects of using a larger or smaller threshold than the proposed "more than 50%" to define "principally," it supports the more than 50% level of a single commodity as proposed. However, they suggested future review of that level if concerns are raised or potential issues need to be addressed.²⁶

Two commenters, Professor Greenberger and Better Markets, objected to the fact that the "based wholly or principally on a single underlying agricultural commodity" approach used in the proposed definition would fail to include indexes that contained several different agricultural commodities but had no concentration of greater than 50% of any one commodity. Professor Greenberger argued that, "The Commission should include a contract based on an index that includes agricultural commodities within the definition of agricultural commodity, so that it may be subject, *inter alia*, to the later rulemakings on speculative position limits under [section] 737 of the Dodd-Frank Act." Better Markets expressed the concern that the proposed definition could enable a person to avoid compliance with other regulatory provisions specific to agricultural commodities, such as speculative position limits. As a potential solution, Better Markets proposed a revision to subparagraph four that would evaluate commodity-based indexes on a pro-rata basis, with no minimum or maximum percentage criterion. Under the Better Markets proposal, any contract on a commodity-based index could be both (1) a contract on agricultural commodities for that percentage of the index that is based on any agricultural commodity, and (2) a contract on non-agricultural commodities for that percentage of the index that is based on any non-agricultural commodity.²⁷

²⁵ As will be discussed further below, MGEX's comment may be based in part on confusion in the Commission's wording of subparagraph four. As proposed, subparagraph four applies to "commodity-based contracts" when in fact the wording should have read "commodity-based indexes," and has been so corrected in the final rule.

²⁶ See letter from NCFC.

²⁷ Better Markets proposed that subparagraph four read as follows: "Commodity-based contracts based on a single underlying agricultural commodity; provided that contracts based on composite prices in the form of an index, which composite prices include one or more agricultural commodities, shall be considered to be one or more commodity-based contracts pro-rata based on the relevant weighting

Thus, for example, a person holding a contract on an index that is equally weighted in corn and soybeans would be considered to have a position in both corn and soybeans and this position would be aggregated with other corn and/or soybeans positions held by that trader for purposes of complying with speculative position limits applicable to either commodity.

Chris Barnard's letter similarly suggested that the Commission should revise category four to apply to "commodity-based [indexes] based wholly or principally on underlying agricultural commodities."

In considering these comments, the Commission has determined to refine category four as follows:

(a) In the final rule, the Commission has removed references to contracts and added references to indexes, confirming that category four applies to commodity-based indexes, rather than commodity-based contracts on an index.

(b) In addition to the revisions described in (a), the text of category four has been revised to include commodity-based indexes "based wholly or principally on underlying agricultural commodities"—as opposed to "based wholly or principally on a single underlying agricultural commodity." As a general matter, the Dodd-Frank Act gives the Commission the authority to prohibit or otherwise limit swaps in an agricultural commodity. In the event that the Commission did take steps to generally prohibit or otherwise limit swaps in an agricultural commodity, there would be legitimate concern about the potential proliferation of "agricultural commodity-based indexes" (and contracts thereon) being designed to replicate the economic terms of otherwise prohibited swaps in an agricultural commodity.

However, because the Commission has proposed to permit swaps in an agricultural commodity to transact subject to the same rules applicable to all other swaps, that concern is almost certainly moot.²⁸ There will be no incentive for regulatory arbitrage as between an agricultural swap and a swap on an index that is economically equivalent to an agricultural swap because both transactions would be subject to the same regulatory scheme. Nonetheless, in response to certain concerns raised by Professor Greenberger, Better Markets, and Mr. Barnard, the Commission is expanding the commodity-based index category of the agricultural commodity definition to

of each such single agricultural commodity in the index."

²⁸ See footnote 9, above.

²² See letter from IATP.

²³ In this context, the Commission believes that the definition is appropriately flexible to incorporate food substitutes and other similar products should there be a need to do so at some point in the future.

²⁴ See NPRM at 75 FR 65586 at 65593, Oct. 26, 2010.

include not only any index that is concentrated at greater than 50% in a single agricultural commodity, but also any index concentrated at greater than 50% in agricultural commodities generally. Thus, for example, an index composed of 25% each, wheat, corn, soybeans, and gold would fall within the definition because more than 50% of that index is composed of agricultural commodities, and any contract on that index would be a contract on an agricultural commodity.

(c) As described above, the Better Markets comment letter also raised a related concern about the potential for avoiding position limits by using swaps on an index as an alternative to swaps on an agricultural commodity. Professor Greenberger expanded the concern, arguing that any multiple commodity index that references any farm product should be included in the definition of agricultural commodity. The Commission has considered these comments and notes the following:

(1) As proposed,²⁹ position limits would be applied on a contract by contract basis. That is, the inquiry into whether an index is an “agricultural commodity” is not relevant, because there are no position limits that would apply broadly to a contract on an “agricultural commodity.” Rather, the proposed position limits apply to positions in specific contracts, known as reference contracts (for example, the CBOT corn contract, the CBOT wheat contract, *etc.*), options thereon, and swaps economically equivalent thereto. The relevant inquiry becomes whether a contract on an index (or pro rata portion thereof) is economically equivalent to a reference contract, as defined in the proposed position limit rules, and not whether an index is or is not an agricultural commodity.

(2) The position limit rules directly address contracts on a commodity-based index that would be used in an attempt to circumvent the position limit rules. Specifically, the proposed position limit rules provide that “a commodity index contract that incorporates the price of a commodity underlying a referenced contract’s commodity, which is used to circumvent speculative position limits, shall be considered to be a referenced contract for the purpose of applying the [proposed position limit rules].”³⁰

(d) As indicated above, MGEX favored withdrawing category four altogether, arguing that cash-settled and electronically traded contracts on indexes (such as contracts on MGEX’s

various wheat, corn, and soybean cash-bid indexes) should remain outside of the definition of agricultural commodity. In response, the Commission initially notes that Dodd-Frank directs the Commission to adopt a definition of agricultural commodity. Pursuant to section 723(c)(3) of the Dodd-Frank Act, swaps in an agricultural commodity (as defined by the Commission) are prohibited unless permitted by a CEA section 4(c) exemption. However, because the agricultural swaps proposal³¹ will, if adopted as proposed, permit agricultural swaps to transact subject to the same rules applicable to any other swap, it appears that the practical effect of being labeled an agricultural commodity (or avoiding the label of agricultural commodity) will be immaterial.

Still, the Commission will retain the authority, pursuant to section 723(c)(3) of the Dodd-Frank Act, to revise or amend the agricultural swaps rules and to place further limitations or restrictions on swaps in an agricultural commodity in the future.³² For that reason, the Commission is taking the step now, via the agricultural commodity definition, to remove any incentive for regulatory gaming that could result from being able to avoid the label of agricultural commodity by, for example, creating indexes, and then executing contracts thereon, that act as the functional or economic equivalent of otherwise limited or prohibited swaps on an agricultural commodity.

Accordingly, the Commission is retaining the commodity-based index component in its agricultural commodity definition, as revised herein.

Customer hedging. BOK submitted a comment letter requesting an exemption from section 723(c)(3)(A) of the Dodd-Frank Act³³ for transactions that hedge customer positions, irrespective of whether the underlying commodity is agricultural or non-agricultural. That is, BOK’s letter requests that the Commission provide a confirmation that

hedging transactions involving agricultural commodities will not be subject to the Dodd-Frank Act’s general prohibition of swaps in an agricultural commodity. The Commission believes that the concerns raised by BOK’s letter have generally been addressed in the Commission’s proposed rules for agricultural swaps and commodity options. Those rules would treat agricultural swaps, whether they constitute hedging or speculation, the same as other swaps. Thus, hedging transactions involving agricultural swaps would be subject to the same standards as hedging transactions involving other commodities.³⁴

Category two determinations. MGEX also commented briefly on the Commission’s explanatory example in the NPRM regarding the phrase “used primarily” in category two. Category two covers: “All other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed, or natural fiber.” The NPRM explained that the phrase “used primarily” means that if “50% of the peaches harvested, plus one, are used for human food” then peaches are an agricultural commodity. MGEX commented that this definition could lead to a slippery slope of managing the use for each crop and that the definition did not appear to provide for legal certainty.

The Commission has considered MGEX’s comment and determined to retain category two as proposed, including the above-quoted explanation of the phrase “used primarily.” Initially, and as noted above, the difference between being labeled an agricultural commodity and any other type of commodity is likely to have minimal or no impact because: (1) The Commission has proposed rules to treat agricultural swaps the same as any other swap; and (2) the position limit rules proposed by the Commission would apply on a contract-by-contract basis and do not key on whether or not a particular commodity is agricultural.

Beyond that, the Commission is not aware of, and MGEX did not identify, any actual commodity where the “amount used for human food, shelter, animal feed, or natural fiber” is so close to 50% as to present a danger of being gamed for the purpose of avoiding the application of the agricultural commodity definition. The point of the

³¹ 76 FR 6095, Feb. 3, 2011.

³² Note that the authority under section 723(c)(3) only applies to swaps in an agricultural commodity and does not extend to futures on an agricultural commodity.

³³ Swaps in an agricultural commodity, other than those currently permitted (for example, pursuant to part 35), are generally prohibited under section 723(c)(3)(A) of the Dodd-Frank Act, which is the provision cited by BOK. However, section 723(c)(3)(B) provides that the Commission, using its CEA section 4(c) authority, may expand the universe of agricultural swaps that are permitted to trade. The Commission’s recent agricultural swaps and commodity options proposal would permit agricultural swaps transactions to continue subject to all rules otherwise applicable to any other swap. See 75 FR 6095, Feb. 3, 2011.

³⁴ See Commodity Options and Agricultural Swaps, 76 FR 6095, Feb. 3, 2011.

²⁹ See Position Limits for Derivatives, 76 FR 4752, Jan. 26, 2011.

³⁰ *Ibid.*

Commission's proposed definition and accompanying explanation was to draw a reasonable and common sense line between that which is agricultural and that which is not. To the extent the prospect of gaming this aspect of category two of the agricultural commodity definition arises in the future, the Commission also points out that it may use category three of the definition to declare any particular commodity to be agricultural by issuing a rule, regulation, or order so designating "after notice and opportunity for hearing."

Effective date. The final question facing the Commission was: "What should be the effective date of the final definition?"³⁵ CME Group noted that "[o]nce adopted, the definition will also clarify the scope of the exemptions under CEA sections 2(g) and 2(h)—at least until Dodd-Frank takes effect and eliminates these exemptions." However, any clarification needed as between the agricultural commodity definition and pre Dodd-Frank CEA provisions is being addressed in the Commission's Dodd-Frank transition period relief.³⁶ Beyond concerns related to pre Dodd-Frank CEA provisions, NCFC noted that it was "unaware of any reason not to make the definition of agricultural commodity effective upon the publication of the final rule."

Therefore, the Commission has determined that the effective date of the final agricultural commodity definition shall be sixty days after the publication of this final rule, as required by the Dodd-Frank Act. By providing that the definition becomes effective as early as is allowed by the Dodd-Frank Act, the Commission intends to provide legal certainty for market participants as they plan for the regulatory regime that will follow the Dodd-Frank transition relief.

³⁵ The NPRM specifically noted:

[I]f the definition of an agricultural commodity is made effective upon the publication of a final rule, it would provide clarity as to what swaps are or are not eligible for the exemptions found in current CEA [sections] 2(g) and 2(h) until the point at which their repeal by the Dodd-Frank Act becomes effective. Is there any reason not to make the definition of agricultural commodity effective upon the publication of a final rule? Are there swaps currently being transacted under [section] 2(g) or [section] 2(h) that would be considered transactions in an agricultural commodity (and thus potentially, temporarily illegal) under the definition proposed herein? If so, should the effective date of the definition be postponed until the repeal of current CEA [sections] 2(g) and 2(h), for all purposes other than for the setting of speculative position limits, which will become effective prior to the repeal?

See NPRM at 65592.

³⁶ See Effective Date for Swap Regulation, 76 FR 35372, June 17, 2011.

Part III—Explanation of the Definition

A. Terms of the Final Definition

Except for the revisions to category four (explained more fully below), the terms of the final definition are the same as the terms of the definition as proposed in the NPRM.

B. Explaining the Definition

Category One—Enumerated Agricultural Commodities

Category one includes the "enumerated agricultural commodities" specified in current section 1a(4) of the Act (renumbered as section 1a(9) under the Dodd-Frank Act). While there is considerable overlap between categories one and two, category one includes some commodities that would not qualify under category two. For example, "fats and oils" would include plant-based oils, such as tung oil and linseed oil, which are used solely for industrial purposes (and thus would not fall within category two). Section 1a(4)'s reference to "oils" would not, however, extend to petroleum products.³⁷

Category Two: Operative Definition of Agricultural Commodities

As a general matter, Category 2 seeks to draw a line between products derived from living organisms that are used for human food, shelter, animal feed or natural fiber (covered by the definition) and products that are produced through processing plant or animal-based inputs to create products largely used as industrial inputs (outside the definition). This general operational definition is self-executing and will encompass commodities that are now or in the future may become subject to swaps, futures, and options trading, without the need for additional CFTC action. In this regard, the rule defines those commodities that are agricultural commodities. It does not matter whether futures, swaps, or options are being traded in the commodity—either now or in the future. Thus, a commodity evaluated under category two either is or is not an agricultural commodity regardless of its trading status.

Some of the terms used in describing the second category require further

³⁷ Petroleum products clearly would not fall within the enumerated commodities. "These itemized commodities are agricultural in nature." Philip McBride Johnson, *Commodities Regulation*, § 1.01, p. 3 (1982). The Commission has never even considered treating petroleum products as agricultural commodities. Nor would petroleum products fall within the second category. Even though they could be viewed as derived from living organisms—albeit organisms that lived millions of years ago—such products would not qualify under the "used primarily for human food, shelter, animal feed or natural fiber" standard of category two.

clarification, particularly the terms, "generally fungible," "used primarily," "human food" and "natural fiber."

"*Generally fungible*"—means substitutable or interchangeable within general classes. For example, apples, coffee beans, and cheese are generally fungible within general classes, even though there are various grades and types, and so they would be agricultural commodities. On the other hand, commodities that have been processed and have taken on a unique identity would not be generally fungible. Thus, while flax or mohair are generally fungible natural fibers, lace and linen garments made from flax, or sweaters made from mohair, are not generally fungible and would not be agricultural commodities under category two.

"*Used primarily*"—means any amount of usage over 50%. For example, if 50% of the peaches harvested, plus one, are used for human food, then peaches fall within category two.

"*Human food*"—includes drink. Thus fruit juice, wine, and beer are "food" for purposes of the definition of "agricultural commodity."

"*Natural fiber*"—means any naturally occurring fiber that is capable of being spun into a yarn or made into a fabric by bonding or by interlacing in a variety of methods including weaving, knitting, braiding, felting, twisting, or webbing, and which is the basic structural element of textile products.

Based on the foregoing, therefore, category two would include such products as: Fruits and fruit juices; vegetables and edible vegetable products; edible products of enumerated commodities, such as wheat flour and corn meal; poultry; milk and milk products, including cheese, nonfat dry milk and dry whey; distiller's dried grain; eggs; cocoa beans, cocoa butter and cocoa; coffee beans and ground coffee; sugarcane, sugar beets, beet pulp (used as animal feed), raw sugar, molasses and refined sugar; honey; beer and wine; shrimp; and silk, flax and mohair.

Category two would also include stud lumber, plywood, strand board and structural panels because they are derived from living organisms (trees), are generally fungible (e.g., random length 2 × 4s and 4 × 8 standard sheets of plywood) and are used primarily for human shelter—i.e., in the construction of dwellings. Category two would not, however, include industrial inputs such as wood pulp, paper or cardboard, nor would it include raw rubber, turpentine or rosin. Although derived from living organisms—trees—and generally fungible, none of these products are

used primarily for human food, shelter, animal feed or natural fibers. On the other hand, maple syrup and maple sugar, also derived from trees, would be “agricultural commodities.” Rayon, which is a fiber derived from trees or other plants, falls out of category two because it is not a natural fiber—i.e., it must be chemically processed from cellulose before it becomes fiber.

Category two would include high fructose corn syrup, but not corn-based products such as polylactic acid (a corn derivative used in biodegradable packaging), butanol (a chemical derived from cornstarch and used in plasticizers, resins, and brake fluid) or other plant-based industrial products. Category two would include pure ethanol, which is derived from living organisms (corn and other plants), is generally fungible, and may be used for human food (as an ingredient of alcoholic beverages). However, it would not include denatured ethanol, which is used for fuel and for other industrial uses, because denatured ethanol cannot be used for human food. Likewise, neither would Category 2 include other plant or animal based renewable fuels, such as methane or biodiesel. Fertilizer and other agricultural chemicals, even though they are used almost exclusively in agriculture, would not fall within the definition because they would not fit into the food, shelter, animal feed, or natural fiber category.

Category Three—Other Agricultural Commodities

Category three would include commodities that do not readily fit into the first two categories, but would nevertheless be widely recognized as commodities of an agricultural nature. Such commodities would include, for example, tobacco, products of horticulture (e.g., ornamental plants), and such other commodities used or consumed by animals or humans as the Commission may by rule, regulation or order designate after notice and opportunity for hearing. The Commission would determine the status of any such other commodities for purposes of the Act and CFTC regulations on a case-by-case basis as questions arise in the context of specific markets or transactions.

Category Four—Commodity-Based Indexes

The term, “agricultural commodity,” also includes a commodity-based index based wholly or principally on underlying agricultural commodities. Thus, for example, the Minneapolis Grain Exchange (“MGEX”) wheat, corn

and soybean price index contracts³⁸ would be considered contracts on agricultural commodities—that is the underlying single commodity index is an agricultural commodity. Also, any index made up of more than 50% of agricultural commodities, since it is based principally on underlying agricultural commodities, would be considered an agricultural commodity for purposes of including it within the agricultural commodity definition. Thus, for example, a commodity-based index composed of 20% each, wheat, corn, soybeans, crude oil and gold, since it is composed of more than 50% agricultural commodities, would be an agricultural commodity. Therefore, swaps on such an index would be subject to special rules (if any) that might be adopted for agricultural commodity swaps.³⁹

The definition of an “excluded commodity” in current CEA section 1a(13)(iii)⁴⁰ could be read to include any index of agricultural commodities. That definition provides that “excluded commodity” means, among other things, “any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction.” However, such a reading is inconsistent with the requirement in Dodd-Frank that swaps in agricultural commodities be permitted only pursuant to a section 4(c) order of the Commission. For example, a swap contract based on a price index of solely wheat should reasonably be considered as a swap in an agricultural commodity. Applying a mechanical interpretation of the definition of excluded commodity could permit “gaming” by allowing an index based principally, or even overwhelmingly, on agricultural commodities to evade any potential limitations on trading agricultural swaps that are found in the Dodd-Frank Act. For this reason, the definition issued herein would include an index based wholly or principally on underlying agricultural commodities.

³⁸ The MGEX agricultural index products are currently available for corn, soybeans, and various types of wheat. These index products are financially settled to a spot index of country origin pricing as calculated by a firm called Data Transmission Network (“DTN”). Cash settlement is based upon the simple average of the spot prices published on the last three trading days of the settlement month.

³⁹ See Commodity Options and Agricultural Swaps, 75 FR 6095, Feb. 3, 2011.

⁴⁰ New section 1a(19)(iii) as renumbered under the Dodd-Frank Act.

Onions

Onions present a unique case in that onions are the only agricultural product specifically excluded from the enumerated commodities list in current CEA section 1a(4). Also, Public Law 85–839 prohibits the trading of onion futures on any board of trade in the United States.⁴¹ Nothing in the definition issued herein affects the prohibition on onion futures trading.

In defining an agricultural commodity, given that term’s statutory history, as well as the Act’s grammatical construction, it would appear that “agricultural commodity” is a subset of “commodity” and, since onions are excluded from the definition of “commodity,” onions cannot be considered an “agricultural commodity.” However, under the Dodd-Frank Act, the definition of “swap” in new section 1a(47) of the CEA is not limited to transactions based upon “commodities” as defined in current section 1a(4) of the Act. Therefore, under the CEA as amended by Dodd-Frank, a swap may be based upon an item that is not defined as a “commodity.” Thus, onion swaps would seem to be permissible, but would not be considered to be swaps in an “agricultural commodity” under the definition contained herein.

C. Effects of Applying the Definition

It is also important to consider the uses to which the definition will be put—i.e., what would be the practical effect of a commodity being classified as an “agricultural commodity” under the definition contained herein? One effect is that the commodity would be covered by any rules the Commission ultimately adopts for agricultural swaps. If, based on the current commodity options and agricultural swaps proposal,⁴² it is determined that agricultural swaps should be treated the same as other physical commodity swaps, the definition should have no effect in the agricultural swaps context.

The other significant effect of a commodity being classified as an “agricultural commodity” is that the commodity would be subject to the timeframes for speculative position limits for agricultural commodities,⁴³ rather than the timeframes for speculative limits for exempt commodities. As discussed above, the classification of a given commodity as

⁴¹ 7 U.S.C. 13–1.

⁴² See Commodity Options and Agricultural Swaps, 76 FR 6095, Feb. 3, 2011.

⁴³ Pursuant to section 737 of the Dodd-Frank Act, the Commission is required to adopt speculative position limits for agricultural commodities.

“agricultural” vs. “exempt” should have no long-term practical effect on the commodity or how it is traded in the speculative limits context because: (1) The definition will only apply to commodities that are the subject of actual swaps or futures trading; and (2) the speculative limits for any such commodities, as proposed, will be based not on any general across-the-board definition or principle, but on the individual characteristics of each commodity, its swaps/futures market, and its underlying cash market.⁴⁴

Part IV—Related Matters

A. Paperwork Reduction Act

The final rule will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the Paperwork Reduction Act.⁴⁵ In the proposed rule, the Commission invited public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the proposed rule. The Commission received no comments on the accuracy of its estimate.

B. Cost Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of adopted regulations outweigh their costs. Rather, section 15(a) requires the Commission to consider the costs and benefits of the subject regulations in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) market efficiency, competitiveness, and financial integrity; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

The agricultural commodity definition is not expected to impose any significant costs on industry participants. In addition, we believe that public interest considerations required by CEA section 15(a) weigh strongly in favor of adopting and issuing the agricultural commodity definition. The public interest benefit is that the definition provides legal certainty for indentifying those commodities that are agricultural commodities—and which may be the subject of a “swap in an agricultural commodity (as defined by the [CFTC]).” See Dodd-Frank section 723(c)(3).⁴⁶ And as stated in the NPRM, defining an agricultural commodity for purposes of the CEA would seem to have limited immediate practical effects. The NPRM noted that the definition will be necessary for other substantive rulemakings, such as the timeframes for setting speculative position limits for exempt and agricultural commodities under section 737 of the Dodd-Frank Act and determining the permissibility of trading agricultural swaps under section 723(c)(3) and section 733 of the Dodd-Frank Act. Those other rulemakings were discussed in the original cost benefit analysis in the NPRM. As those rules have now been proposed, the respective costs and benefits of those rules are discussed in those proposed rules.⁴⁷

Regarding comments received concerning costs and benefits, Professor Greenberger stressed that the cost benefit analysis should concentrate on protecting the public interest. The professor noted that reasonable food prices are in the public interest and expressed his view that speculative position limits are an effective tool to curb excessive speculation that can artificially raise food prices. Professor Greenberger argued that any multiple commodity index that references any farm product should be included in the definition of agricultural commodity. Much like Professor Greenberger, IATP believed that public interest considerations, including food security, should be paramount in the cost benefit analysis. As noted in the summary of comments above, the proposed position limits rulemaking contains a provision designed to prevent “gaming” of speculative position limits in relation to indexes, including indexes with

agricultural components. In addition, this final rule includes a revised commodity-based index provision that would include any index made up of more than 50% of agricultural commodities in the agricultural commodity definition. In contrast, the proposed rule would only have included an index made up of more than 50% of a single agricultural commodity.

The Commission also notes that category three of the definition, which permits the Commission to designate new agricultural commodities after a notice and comment period, is designed to provide an appropriate level of flexibility for the Commission as unforeseen developments and challenges emerge in relation to agricultural commodities.

The Ag Swaps Working Group, Gavilon, DFA and the CME Group commented that clarifying that the general operational definition in the second category of the agricultural commodity definition is self-executing would increase legal certainty. The Ag Swaps Working Group and DFA added that such a clarification would be in the public interest. As noted in the summary of comments above, the Commission has made such a clarification.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) ⁴⁸ requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The rules contained herein provide a definition that will largely be used in other rulemakings and which, by itself, imposes no significant new regulatory requirements. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rules will not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Definitions, Agriculture, Agricultural commodity.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 5h, and 8a thereof, 7 U.S.C. 2, 7b–3, and 12a, and pursuant to the authority contained in section 723(c)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), the Commission

⁴⁴ See Position Limits for Derivatives, 76 FR 4752, Jan. 26, 2011.

⁴⁵ 44 U.S.C. 3501 *et seq.*

⁴⁶ The Commission views this language as a Congressional directive to provide a formal definition of the term “agricultural commodity,” and by issuing this definition, the Commission is following that directive.

⁴⁷ See Position Limits for Derivatives, 76 FR 4752, Jan. 26, 2011, and Commodity Options and Agricultural Swaps, 76 FR 6095, Feb. 3, 2011.

⁴⁸ 5 U.S.C. 601 *et seq.*

hereby amends Chapter 1 of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. The authority citation for Part 1 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a–6p, 7, 7a, 7b, 7b–3, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24, unless otherwise noted.

■ 2. Section 1.3 is amended by adding paragraph (zz) to read as follows:

§ 1.3 Definitions.

* * * * *

(zz) *Agricultural commodity*. This term means:

(1) The following commodities specifically enumerated in the definition of a “commodity” found in section 1a of the Act: Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, but not onions;

(2) All other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed or natural fiber;

(3) Tobacco, products of horticulture, and such other commodities used or consumed by animals or humans as the Commission may by rule, regulation or order designate after notice and opportunity for hearing; and

(4) Commodity-based indexes based wholly or principally on underlying agricultural commodities.

* * * * *

Issued in Washington, DC, on July 7, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Agricultural Commodity Definition—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, O'Malia and Chilton voted in the affirmative; no Commissioner voted in the negative

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking that defines the term, “agricultural commodity.” The Dodd-Frank Act requires that agricultural commodities be defined. In a separate rulemaking, the Commission will determine the requirements that apply to swaps on agricultural commodities.

[FR Doc. 2011–17626 Filed 7–12–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–64832; File No. S7–29–11]

RIN 3235–AL18

Amendment to Rule Filing Requirements for Dually-Registered Clearing Agencies

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule; request for comment.

SUMMARY: The Securities and Exchange Commission (“SEC” or “Commission”) is adopting an interim final rule to amend Rule 19b–4 under the Securities Exchange Act of 1934 (“Exchange Act”). The amendment expands the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act to include any matter effecting a change in an existing service of a clearing agency registered with the Commission (“Registered Clearing Agency”) that both primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. The Commission also is making a corresponding technical modification to the General Instructions for Form 19b–4 under the Exchange Act. The amendments to Rule 19b–4 and Form 19b–4 are intended to streamline the rule filing process in areas involving certain activities concerning non-security products that may be subject to overlapping regulation as a result of, in part, certain provisions under Section 763(b) of the Dodd-Frank Wall Street

Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) that would deem some clearing agencies to be registered with the Commission as of July 16, 2011.

DATES: *Effective Date:* July 15, 2011.

Comment Date: Comments on the interim final rule should be submitted on or before September 15, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7–29–11 on the subject line; or

- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–29–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F St., NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Jeffrey S. Mooney, Assistant Director; Joseph P. Kamnik, Senior Special Counsel; and Andrew R. Bernstein, Attorney-Adviser, Office of Clearance and Settlement, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010 at (202) 551–5710.

SUPPLEMENTARY INFORMATION: The Commission is adopting an amendment to Rule 19b–4 under the Exchange Act as an interim final rule to expand the list of categories that qualify for

summary effectiveness under Section 19(b)(3)(A) of the Exchange Act. The Commission also is making a corresponding technical modification to the General Instructions for Form 19b-4 under the Exchange Act. We will carefully consider the comments that we receive and intend to respond as necessary or appropriate.

I. Introduction

A. Background on Commission Process for Proposed Rule Changes

Section 19(b)(1) of the Exchange Act¹ requires each self-regulatory organization (“SRO”), including any Registered Clearing Agency,² to file with the Commission copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO (collectively, “Proposed Rule Change”),³ which must be submitted on Form 19b-4⁴ in accordance with the General Instructions thereto. Once a Proposed Rule Change has been filed, the Commission is required to publish it in the **Federal Register** to provide an opportunity for public comment.⁵ A Proposed Rule Change generally may not take effect unless the Commission approves it,⁶ or it is otherwise permitted

to become effective under Section 19(b).⁷

Section 19(b)(2) of the Exchange Act sets forth the standards and time periods for Commission action either to approve, disapprove or institute proceedings to determine whether the Proposed Rule Change should be disapproved.⁸ The Commission must approve a Proposed Rule Change if it finds that the underlying rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the SRO proposing the rule change.⁹

The SRO rule filing process for Registered Clearing Agencies serves two important policy goals. First, the notice and comment requirement helps assure that interested persons have an opportunity to provide input on proposed actions by Registered Clearing Agencies that could have a significant impact on the market, market participants (both professionals and individual investors) and others.¹⁰ Second, the rule filing process allows the Commission to review Registered Clearing Agencies’ Proposed Rule Changes to determine whether they are consistent with the Exchange Act, including the goals of prompt and accurate clearance and settlement of securities transactions and the safeguarding of investors’ securities and funds.¹¹

At the same time, Section 19(b)(3)(A) of the Exchange Act provides that a Proposed Rule Change may become effective upon filing with the Commission, without notice and opportunity for hearing, if it is appropriately designated by the SRO as: (i) Constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO; (ii) establishing or changing a due, fee, or other charge imposed by the SRO (on any person, whether or not the person is a member of the SRO) or (iii) concerned solely with the administration of the SRO.¹² The Commission has the power summarily to temporarily suspend the change in rules of the SRO within sixty days of its

filing if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.¹³ If the Commission takes such action, it is then required to institute proceedings to determine whether the Proposed Rule Change should be approved or disapproved.¹⁴

In addition to the matters expressly set forth in the statute, Section 19(b)(3)(A) also provides the Commission with the authority, by rule and consistent with the public interest, to designate other types of Proposed Rule Changes that may be effective upon filing with the Commission.¹⁵ The Commission has previously utilized this authority to designate, under Rule 19b-4 of the Exchange Act, certain rule changes that qualify for summary effectiveness under Section 19(b)(3)(A).¹⁶

B. Clearing Agencies Deemed Registered Under the Dodd-Frank Act

Section 763(b) of the Dodd-Frank Act¹⁷ provides that (i) A depository institution registered with the Commodity Futures Trading

¹ 15 U.S.C. 78s(b)(1).

² See Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26) (defining the term “self-regulatory organization” to mean any national securities exchange, registered securities association, registered clearing agency, and, for purposes of Section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board) (emphasis added).

³ 15 U.S.C. 78s(b)(1). Section 3(a)(27) of the Exchange Act defines “rules” to include “the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing * * * and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.” 15 U.S.C. 78c(a)(27). Rule 19b-4(b) under the Exchange Act defines “stated policy, practice, or interpretation” to mean, in part, “[a]ny material aspect of the operation of the facilities of the self-regulatory organization” or “[a]ny statement made generally available” that “establishes or changes any standard, limit, or guideline” with respect to the “rights, obligations, or privileges” of persons or the “meaning, administration, or enforcement of an existing rule.” 17 CFR 240.19b-4(b).

⁴ See 17 CFR 249.819.

⁵ See 15 U.S.C. 78s(b)(1). The SRO is required to prepare the notice of its Proposed Rule Change on Exhibit 1 of Form 19b-4 that the Commission then publishes in the **Federal Register**.

⁶ See 15 U.S.C. 78s(b)(2). However, as provided in Section 19(b)(2)(D) of the Exchange Act, 15 U.S.C. 78s(b)(2)(D), a Proposed Rule Change may be “deemed to have been approved by the Commission” if the Commission fails to take action on a proposal that is subject to Commission approval within the statutory time frames specified in Section 19(b)(2).

⁷ See, e.g., 15 U.S.C. 78s(b)(3)(A).

⁸ See 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ See Securities Exchange Act Release No. 49505 (Mar. 30, 2004), 69 FR 17864 (Apr. 4, 2004) (Proposed Rules Regarding Proposed Rule Changes of Self-Regulatory Organizations) (noting that SROs “exercise certain quasi-governmental powers over members through their ability to impose disciplinary sanctions, deny membership, and require members to cease doing business entirely or in specified ways.”).

¹¹ See 15 U.S.C. 78q-1(a)(1).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 15 U.S.C. 78s(b)(3)(C).

¹⁴ *Id.* Temporary suspension of a Proposed Rule Change and any subsequent action to approve or disapprove such change shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under Section 25 of the Exchange Act, nor shall it be deemed to be “final agency action” for purposes of 5 U.S.C. 704.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ For example, Rule 19b-4(f) under the Exchange Act currently permits SROs to declare rule changes to be immediately effective pursuant to Section 19(b)(3)(A) if properly designated by the SRO as: (i) Effecting a change in an existing service of a Registered Clearing Agency that: (A) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and (B) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service; (ii) effecting a change in an existing order-entry or trading system of a SRO that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not have the effect of limiting the access to or availability of the system or (iii) effecting a change that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the SRO has given the Commission written notice of its intent to file the Proposed Rule Change, along with a brief description and text of the Proposed Rule Change, at least five business days prior to the date of filing of the Proposed Rule Change, or such shorter time as designated by the Commission. See 17 CFR 240.19b-4(f).

¹⁷ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

Commission (“CFTC”) that cleared swaps as a multilateral clearing organization prior to the date of enactment of the Dodd-Frank Act and (ii) a derivatives clearing organization (“DCO”) registered with the CFTC that cleared swaps pursuant to an exemption from registration as a clearing agency prior to the date of enactment of the Dodd-Frank Act will be deemed registered with the Commission as a clearing agency solely for the purpose of clearing security-based swaps (“Deemed Registered Provision”).¹⁸ The Deemed Registered Provision, along with other general provisions under Title VII of the Dodd-Frank Act, becomes effective on July 16, 2011.¹⁹ Once a clearing agency is deemed to be a Registered Clearing Agency, it will be required to comply with all requirements of the Exchange Act, and the rules and regulations thereunder, applicable to Registered Clearing Agencies to the extent it clears security-based swaps after the effective date of the Deemed Registered Provision, including, for example, the obligation to file Proposed Rule Changes under Section 19(b) of the Exchange Act.²⁰ Clearing of futures and options on futures is generally regulated by the CFTC in connection with its oversight and supervision of DCOs. DCOs are generally permitted to implement rule changes by self-certifying that the new rule complies with the Commodity Exchange Act (“CEA”) and the CFTC’s regulations.²¹ The change effected by this interim final rule is intended to eliminate any burdens resulting from delays that could arise due to the differences between the Commission’s rule filing process and the CFTC’s self-certification process, which generally allows rule changes to become effective

immediately upon or shortly after filing.²²

The Commission has limited time to act without exposing certain dually registered clearing agencies to potential legal uncertainty and market disruption caused by delays that could result from the requirement that the Commission undertake a full review of Proposed Rule Changes related to a Registered Clearing Agency’s futures clearing operations before these Proposed Rule Changes may be made effective. Specifically, and as discussed in greater detail in Section IV, the Commission only recently received urgent requests for the relief to be provided by the interim final rule. Accordingly, and in the interest of adopting the changes to Rule 19b–4 and the General Instructions for Form 19b–4 prior to effective date of the Deemed Registered Provision of the Dodd-Frank Act on July 16, 2011, the Commission finds that it has good cause to adopt the interim final rule immediately and without the notice and public comment procedures that would ordinarily apply to this type of rulemaking.

II. Interim Final Rule

A. Amendment to Rule 19b–4

The Commission is amending Rule 19b–4 to expand the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act to include Proposed Rule Changes made by Registered Clearing Agencies with respect to certain futures clearing operations.²³ Specifically, new Rule 19b–4(f)(4)(ii) will allow a Proposed Rule Change concerning futures clearing operations filed by a Registered Clearing Agency to take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) so long as it is properly designated by the Registered Clearing Agency as effecting a change in a service of the Registered

Clearing Agency that meets two conditions.²⁴ The first condition, contained in new Rule 19b–4(f)(4)(ii)(A), is that the Proposed Rule Change primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures.²⁵ For purposes of this requirement, a Registered Clearing Agency’s “futures clearing operations” would generally include any activity that would require the Registered Clearing Agency to register with the CFTC as a DCO in accordance with the CEA.²⁶ In addition, to “primarily affect” such futures clearing operations would mean that the Proposed Rule Change is targeted to affect matters related to the clearing of futures specifically and that any effect on other clearing operations would be incidental in nature and not significant in extent.²⁷ However, because a security futures product is a security for purposes of the Exchange Act,²⁸ a Registered Clearing Agency will not be permitted to file Proposed Rule Changes related to its security futures business pursuant to Section 19(b)(3)(A) of the Exchange Act in reliance on new Rule 19b–4(f)(ii). Instead, such clearing agency will continue to be required to file Proposed Rule Changes with the Commission related to its respective security futures operations in accordance with Section 19(b)(1) of the Exchange Act, which the Commission will review in accordance with Section 19(b)(2), unless there is another basis for the Proposed Rule Change to be filed under Section 19(b)(3)(A).

The second condition, contained in new Rule 19b–4(f)(4)(ii)(B), is that the Proposed Rule Change does not significantly affect any securities clearing operations of the clearing

²⁴ 17 CFR 240.19b–4(f)(4)(ii) (as amended by this interim final rule).

²⁵ 17 CFR 240.19b–4(f)(4)(ii)(A) (as amended by this interim final rule).

²⁶ See 7 U.S.C. 7a–1 (providing that it shall be unlawful for a DCO, unless registered with the CFTC, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a DCO (as described in 7 U.S.C. 1a(9)) with respect to a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option is (i) Otherwise excluded from registration in accordance with certain sections of the CEA or (ii) a security futures product cleared by a Registered Clearing Agency).

²⁷ For example, rules of general applicability that would apply equally to securities clearing operations, including security-based swaps, would not be considered to primarily affect such futures clearing operations. In addition, changes to general provisions in the constitution, articles, or bylaws of the Registered Clearing Agency that address the operations of entire clearing agency would not be considered to primarily affect such futures clearing operations.

²⁸ 15 U.S.C. 78c(a)(10).

¹⁸ See Section 763(b) of the Dodd-Frank Act (adding new Section 17A(l) to the Exchange Act, 15 U.S.C. 78q–1(1)). Under this Deemed Registered Provision, each of the Chicago Mercantile Exchange Inc. (“CME”), ICE Clear Europe Limited (“ICE Clear Europe”) and ICE Trust US LLC, or a successor entity of ICE Trust (“ICE Trust”) will become Registered Clearing Agencies solely for the purpose of clearing security-based swaps.

¹⁹ Section 774 of the Dodd-Frank Act states, “[u]nless otherwise provided, the provisions of this subtitle shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle.”

²⁰ The Commission anticipates that as of July 16, 2011, OCC (formerly known as The Options Clearing Corporation), CME and ICE Clear Europe will be the only Registered Clearing Agencies that will be subject to new Rule 19b–4(f)(4)(ii). Although it also will be a dually-registered clearing agency, ICE Trust does not have an existing futures clearing business for which it would file Proposed Rule Changes.

²¹ See 7 U.S.C. 7a–2(c) and 17 CFR 40.6.

²² See 7 U.S.C. 7a–2(c) and 17 CFR 40.6.

²³ When an SRO submits a Proposed Rule Change to the Commission pursuant to Section 19(b)(3)(A) of the Exchange Act, the Commission still reviews the filing and has the power summarily to temporarily suspend the change in rules of the SRO within sixty days of its filing if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, it is then required to institute proceedings to determine whether the Proposed Rule Change should be approved or disapproved. Temporary suspension of a Proposed Rule Change and any subsequent action to approve or disapprove such change shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under Section 25 of the Exchange Act, nor shall it be deemed to be “final agency action” for purposes of 5 U.S.C. 704. See 15 U.S.C. 78s(b)(3)(A).

agency or any related rights or obligations of the clearing agency or persons using such service.²⁹ The Commission notes that the phrase “significantly affect” currently is used elsewhere in Rule 19b–4 in the context of defining other categories of Proposed Rule Changes that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act.³⁰ Accordingly, “significantly affect” has the same meaning and interpretation as that phrase has in Rules 19b–4(f)(4)(i) (as amended by this interim final rule), 19b–4(f)(5) and 19b–4(f)(6). Also for purposes of this requirement, a Registered Clearing Agency’s “securities clearing operations * * * or any related rights or obligations of the clearing agency or persons using such service” would generally include any activity that would require the Registered Clearing Agency to register as a clearing agency in accordance with the Exchange Act.

The Commission believes that permitting clearing agencies to submit Proposed Rule Changes that meet the two conditions referenced above (*i.e.*, (A) Primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and (B) does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service) for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Exchange Act is consistent with the public interest and the purposes of the Exchange Act.

²⁹ 17 CFR 240.19b–4(f)(4)(ii)(A) (as amended by this interim final rule).

³⁰ See *e.g.*, 17 CFR 240.19b–4(f)(4)(i) (as amended by this interim final rule) (in respect of a Proposed Rule Change in an existing service of a Registered Clearing Agency that: (1) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (2) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service); 17 CFR 240.19b–4(f)(5) (in respect of a Proposed Rule Change in an existing order-entry or trading system of a SRO that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting the access to or availability of the system); and 17 CFR 240.19b–4(f)(6) (in respect of a Proposed Rule Change that (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the SRO has given the Commission written notice of its intent to file the Proposed Rule Change, along with a brief description and text of the Proposed Rule Change, at least five business days prior to the date of filing of the Proposed Rule Change, or such shorter time as designated by the Commission).

In particular, this approach should help limit the potential for delays by providing a streamlined process for allowing rule changes to become effective that primarily concern the futures clearing operations of a clearing agency which, unless such operations were linked to securities clearing operations, would not be subject to regulation by the Commission. In addition, the information provided to the Commission by the Registered Clearing Agency in a filing made pursuant to Section 19(b)(1) of the Exchange Act is virtually identical to the information required to be included in a filing made pursuant to Section 19(b)(3)(A). At the same time, the Commission would retain the power summarily to temporarily suspend the change in rules of the Registered Clearing Agency within sixty days of its filing if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.³¹ Finally, and as discussed more fully in Section IV of this release, changes to a clearing agency’s futures clearing operations will continue to be subject to the CFTC’s normal process for reviewing rule changes.

B. Amendment to the General Instructions for Form 19b–4

In order to accommodate the amendment to Rule 19b–4 being adopted today, the Commission also is making a corresponding technical modification to the General Instructions for Form 19b–4 under the Exchange Act. Specifically, the Commission is amending Item 7(b) of the General Instructions for Form 19b–4 (Information to be Included in the Completed Form), which requires the respondent SRO to cite to the statutory basis for filing a Proposed Rule Change pursuant to Section 19(b)(3)(A) in accordance with the existing provisions of Rule 19b–4(f). This amendment would revise Item 7(b)(iv) to include the option to file the form in accordance with new Rule 19b–4(f)(4)(ii), which provides for situations where a Registered Clearing Agency is effecting a change in an existing service that both (i) Primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and (ii) does not significantly affect any securities clearing operations

³¹ 15 U.S.C. 78s(b)(3)(C). If the Commission takes such action, it is then required to institute proceedings to determine whether the Proposed Rule Change should be approved or disapproved.

of the clearing agency or any related rights or obligations of the clearing agency or persons using such service.

C. Effective Date

The amendments to Rule 19b–4 and to the General Instructions for Form 19b–4 will be effective as of July 15, 2011.

III. Request for Comment

We are requesting comments from all members of the public. We will carefully consider the comments that we receive. We seek comment generally on all aspects of the interim final rule. In addition, we seek comment on the following:

1. Do the amendments contemplated by this interim final rule adequately address concerns regarding the application of the Commission’s process for reviewing Proposed Rule Changes once the Deemed Registered Provision becomes effective?

2. Given that the objectives and statutory authority of the CFTC differ from the Commission’s, does the degree to which the interim final rule uses a process that is similar to the CFTC’s process for reviewing rule changes by a Registered Clearing Agency that primarily affect its futures clearing operations and do not significantly affect its securities clearing operations provide for sufficient protection for investors and the securities markets? Why or why not?

3. Are there other amendments the Commission should consider making to Rule 19b–4, such as further expanding the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act? If so, please describe any amendments the Commission should consider and reasons why.

4. Should any additional restrictions be placed on the ability of a Registered Clearing Agency to file Proposed Rule Changes under Exchange Act Section 19(b)(3)(A)?

IV. Other Matters

The Administrative Procedure Act (“APA”)³² generally requires an agency to publish, before adopting a rule, notice of a proposed rulemaking in the **Federal Register**.³³ This requirement does not apply, however, if the agency “for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.”³⁴ Further, the APA also generally requires that an agency

³² 5 U.S.C. 551 *et seq.*

³³ See 5 U.S.C. 553(b).

³⁴ *Id.*

publish a rule in the **Federal Register** 30 days before the rule becomes effective.³⁵ This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.³⁶

The Commission finds that it has good cause to have these rules take effect on July 15, 2011, on an interim final basis and that notice and solicitation of comment before the effective date of the proposed amendments to Rule 19b-4 and to the General Instructions for Form 19b-4 is impracticable, unnecessary, or contrary to the public interest.

Specifically, Section 763(b) of the Dodd-Frank Act provides that both (i) A depository institution registered with the CFTC that cleared swaps as a multilateral clearing organization prior to the date of enactment of the Dodd-Frank Act and (ii) a DCO registered with the CFTC that cleared swaps pursuant to an exemption from registration as a clearing agency prior to the date of enactment of the Dodd-Frank Act will be deemed registered with the Commission as a clearing agency solely for the purpose of clearing security-based swaps.³⁷ The Deemed Registered Provision, along with other general provisions under Title VII of the Dodd-Frank Act, becomes effective on July 16, 2011.³⁸

The Commission recognizes that the differences between the Commission's rule filing process for Registered Clearing Agencies and the CFTC's process for reviewing rule changes by DCOs could result in additional burdens on certain clearing agencies subject to the Deemed Registered Provision, which are discussed in greater detail below.³⁹ Specifically, DCOs are generally permitted to implement new rules or rule amendments by filing with the CFTC a certification that the new rule or rule amendment complies with the CEA and the CFTC's regulations.⁴⁰

Alternatively, DCOs may request direct CFTC approval of a rule or amendment thereunder after it has been filed with the CFTC pursuant either to its self-certification process or as a request for direct approval of a rule or amendment.⁴¹ Because of the differences between the CFTC's process and the Commission's rules for reviewing Proposed Rule Changes, a rule or rule amendment proposed by a dually-registered clearing agency related exclusively to its futures clearing operations could be delayed by the Commission's rule filing process despite being permitted to become effective by the CFTC immediately upon or shortly after filing.⁴²

This interim final rule takes effect on July 15, 2011. For several reasons, including those discussed above, we have acted on an interim final basis. Specifically, affected clearing agencies requested action with respect to Registered Clearing Agencies' obligations under Section 19(b) of the Exchange Act only shortly before the effective date of the Deemed Registered Provision. Based on discussions with these affected clearing agencies, the Commission understands that market participants believe that the Commission needs to provide relief prior to the effective date of the Deemed Registered Provision of the Dodd-Frank Act on July 16, 2011 in order to avoid operational problems, legal uncertainty and market disruptions.

Specifically, one clearing agency subject to the Deemed Registered

long as the CFTC receives the submission by the open of business on the business day preceding implementation of the rule. See 17 CFR 40.6. However, Section 745 of the Dodd-Frank Act amended Section 5c(c) of the CEA to include a new 10-day certification review period for all rules and rule amendments submitted to the CFTC and to permit the CFTC to stay the certification of rules or rule amendments that, among other things, present novel or complex issues that require additional time to analyze. Pursuant to Section 754 of the Dodd-Frank Act, this change to the timing of the self-certification process takes effect on the later of 360 days after the date of the enactment of the statute or not less than 60 days after publication of the final rule or regulation implementing such provision.

⁴¹ See 7 U.S.C. 7a-2(c) and 17 CFR 40.5.

⁴² During 2010, CME self-certified 11 rule changes with the CFTC related to its activities as a DCO. ICE Clear Europe, which became a registered DCO on January 22, 2010, did not self-certify any rule changes during 2010, but has self-certified 11 rule changes with the CFTC since January 1, 2011. Currently, OCC, which is registered with the Commission as a clearing agency with respect to its clearing services for options and security futures listed and traded on its participant exchanges, also is registered with the CFTC as a DCO with respect to its clearing services for transactions in futures and options on futures. During 2010, OCC filed 19 Proposed Rule Changes with the Commission and 19 rule changes with the CFTC, of which 15 were resolved through the CFTC's self-certification process and four were resolved or are pending pursuant to the CFTC's direct approval process.

Provision contacted staff in late April 2011 to alert the Commission that it had determined that, absent the approach set out in the interim final rule we are adopting today, the clearing agency would encounter a number of negative consequences.⁴³ For example, delays resulting from the requirement that the Commission undertake a full review of Proposed Rule Changes related to a Registered Clearing Agency's futures clearing operations before these Proposed Rule Changes may be made effective could impair a clearing agency's ability to bring beneficial enhancements or other changes into the futures markets, such as those related to improving the operational efficiency of its futures clearing business. These delays could also lead to legal uncertainty regarding the status of Proposed Rule Changes after they have been self-certified with the CFTC but prior to the date on which the Commission makes a final determination in accordance with Section 19(b) of the Exchange Act. As a result, both the clearing agency and market participants could potentially be required to develop contingency plans with alternative approaches related to the clearing of futures which would likely result in substantial operational burdens and increased costs. As a result, the clearing agency requested that the Commission provide relief on the basis that subjecting Proposed Rule Changes that relate primarily to its futures clearing operations to the routine Commission approval process would needlessly delay effectiveness of these Proposed Rule Changes and could affect the clearing agency's operations as well as ability to provide enhancements that promote efficiencies with respect to its futures related activities. In May 2011, another clearing agency contacted the Commission to convey the need for urgent rulemaking by the Commission to address these same issues.

Notwithstanding the limited amount of time before the Deemed Registered Provision becomes effective, and therefore the limited time the Commission has to act, these clearing agencies expressed their strong view that the Commission should provide relief immediately in order to prevent the above-described potential operational problems, legal uncertainty

⁴³ The Commission's staff discussed with this clearing agency in late February 2011, among other things, the regulatory requirements for Registered Clearing Agencies under the Exchange Act in light of the Deemed Registered Provision including with respect to Proposed Rule Changes. Subsequently, in late April 2011, that clearing agency articulated an urgent need for relief prior to the effectiveness of the Deemed Registered Provision.

³⁵ See 5 U.S.C. 553(d).

³⁶ *Id.*

³⁷ See Section 763(b) of the Dodd-Frank Act (adding new Section 17A(l) to the Exchange Act, 15 U.S.C. 78q-1(1)).

³⁸ Section 774 of the Dodd-Frank Act states, "[u]nless otherwise provided, the provisions of this subtitle shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle."

³⁹ The CFTC's requirements and procedures for self-certification filings and approval requests for new and amended rules and the clearing of new products are set forth in 17 CFR 40.6, 17 CFR 40.5 and 17 CFR 40.2.

⁴⁰ See 7 U.S.C. 7a-2(c). Unless designated by the DCO as an emergency rule certification, rule changes submitted to the CFTC pursuant to the self-certification process may take effect immediately so

and market disruptions from manifesting into actual issues for Registered Clearing Agencies once the Deemed Registered Provision becomes effective on July 16, 2011.

In light of the concerns raised by these clearing agencies, the Commission believes that adopting an interim final rule to immediately amend Rule 19b-4 in the manner as set forth above would benefit the public interest by eliminating any undue delays and operational inefficiencies that could result from the requirement that the Commission review changes to rules primarily concerning futures clearing operations before they become effective. This could potentially benefit market participants (including investors) by, among other things, preventing delays to beneficial enhancements within the futures markets. Accordingly, the Commission finds that there is good cause to have the rule effective as an interim final rule on July 15, 2011, and that notice and public procedure in advance of effectiveness of the interim final rule are impracticable, unnecessary and contrary to the public interest.⁴⁴ The Commission is requesting comments on the interim final rule and will carefully consider any comments received and respond to them as necessary or appropriate.

V. Paperwork Reduction Act

The Commission does not believe that the amendments to Rule 19b-4 and to the General Instructions for Form 19b-4 adopted pursuant to the interim final rule contain any "collection of information" requirements as defined by the Paperwork Reduction Act of 1995, as amended ("PRA").⁴⁵ The interim final rule amends Rule 19b-4 under the Exchange Act to expand the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act to include any matter effecting a change in an existing service of a Registered Clearing Agency that both primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. The interim

final rule also makes a corresponding technical modification to the General Instructions for Form 19b-4 under the Exchange Act. The Commission does not believe that these amendments would require any new or additional collection of information, as such term is defined in the PRA.⁴⁶

VI. Cost-Benefit Analysis

As noted above, the Deemed Registered Provision, along with other general provisions under Title VII of the Dodd-Frank Act, becomes effective on July 16, 2011. At such time, the Commission expects that there will be three Registered Clearing Agencies that maintain a futures clearing business regulated by the CFTC.⁴⁷ Accordingly, these entities will be required to file Proposed Rule Changes with the Commission under Section 19(b) of the Exchange Act, and to comply separately with the CFTC's process for self-certification or direct approval of rules or rule amendments. The Commission is sensitive to the increased burdens these obligations will impose and agrees that it is in the public interest to eliminate any potential inefficiencies and undue delays that could result from the requirement that the Commission review changes to rules primarily concerning futures clearing operations before they may be considered effective.

A. Benefits

New Rule 19b-4(f)(4)(ii) will eliminate the requirement for Registered Clearing Agencies to submit a significant number of Proposed Rule Changes that primarily affect their futures clearing operations with the Commission for pre-approval pursuant to Section 19(b)(1) of the Exchange Act. As a result, the rule would eliminate any potential inefficiencies and undue delays that could result from the requirement that the Commission review the Proposed Rule Change before it may be considered effective. At the

same time, the Commission would retain the power summarily to temporarily suspend the change in rules of the Registered Clearing Agency within sixty days of its filing if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.⁴⁸

As a result, the Commission would be providing the Registered Clearing Agency with the ability to declare the Proposed Rule Change immediately effective, thereby limiting potential delays to activities related to its futures operations that may be beneficial to both the clearing agency and market participants, in a manner that does not impair the Commission's ability to review the filing and to determine whether it would be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, to conduct a more thorough analysis of the issues.

B. Costs

As noted above, the amendments to Rule 19b-4 would expand the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act. These amendments will not materially increase or decrease the costs of complying with Rule 19b-4, nor will they modify an SRO's obligation to submit a Proposed Rule Change to the Commission; rather, the amendments will change the statutory basis under which a rule change is filed. As a result, new Rule 19b-4(f)(4)(ii) would impose minimal, if any, costs on a Registered Clearing Agency, which would consist solely of the time spent determining whether a Proposed Rule Change qualifies for summary effectiveness pursuant to new Rule 19b-4(f)(4)(ii).

The Commission requests that commenters provide views and supporting information regarding the costs and benefits associated with the proposals. The Commission seeks estimates of these costs and benefits, as well as any costs and benefits not already identified.

⁴⁴ This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are "impractical, unnecessary or contrary to the public interest," a rule "shall take effect at such time as the federal agency promulgating the rule determines.")

⁴⁵ 44 U.S.C. 3501, *et seq.*

⁴⁶ The PRA defines a "collection of information" as "the obtaining, causing to be obtained, soliciting or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for * * * answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons * * *" 44 U.S.C. 3502(3)(A). The Commission preliminarily does not believe that the reporting and recordkeeping provisions in this interim final rule contain "collection of information requirements" within the meaning of the PRA because fewer than ten persons are expected to rely on Rule 19b-4(f)(4)(ii). Based on discussions with market participants, the Commission believes that only three Registered Clearing Agencies will maintain a futures clearing business regulated by the CFTC as of the effective date of the Deemed Registered Provision.

⁴⁷ These include OCC, CME and ICE Clear Europe.

⁴⁸ 15 U.S.C. 78s(b)(3)(C). If the Commission takes such action, it is then required to institute proceedings to determine whether the Proposed Rule Change should be approved or disapproved.

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)⁴⁹ of the Exchange Act requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act⁵⁰ requires the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.

As discussed above, the amendment to Rule 19b-4 will expand the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act to include any matter that both (i) Primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and (ii) does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. Specifically, new Rule 19b-4(f)(4)(ii) is intended to avoid undue delays that could result from the requirement that the Commission review changes to rules primarily concerning futures clearing operations before they may be considered effective. Without new Rule 19b-4(f)(4)(ii), certain clearing agencies would be required to submit a significant number of Proposed Rule Changes to the Commission for consideration and approval pursuant to Section 19(b)(1) that relate primarily to their futures clearing operations. Accordingly, the Commission believes such changes would not result in any burden to competition and would instead contribute to a better capital formation and more efficient markets by limiting the potential for any undue delays for services or changes that may benefit market participants.

VIII. Regulatory Flexibility Certification

The Regulatory Flexibility Act ("RFA")⁵¹ requires the Commission, in

promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the APA,⁵² as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on "small entities."⁵³ Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.⁵⁴

For the purposes of Commission rulemaking in connection with the RFA, a small entity includes, when used with reference to a clearing agency, a clearing agency that: (i) Compared, cleared and settled less than \$500 million in securities transactions during the preceding fiscal year; (ii) had less than \$200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter) and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.⁵⁵ Under the standards adopted by the Small Business Administration, small entities in the finance industry include the following: (i) For entities engaged in investment banking, securities dealing and securities brokerage activities, entities with \$6.5 million or less in annual receipts; (ii) for entities engaged in trust, fiduciary and custody activities, entities with \$6.5 million or less in annual receipts and (iii) funds, trusts and other financial vehicles with \$6.5 million or less in annual receipts.⁵⁶

The amendments to Rule 19b-4 and to the General Instructions for Form 19b-4 would apply to all Registered Clearing Agencies. As of July 16, 2011, there likely will be seven clearing agencies with active operations registered with the Commission. Of the seven Registered Clearing Agencies with active operations, three currently maintain a futures clearing business. Based on the Commission's existing information about these three Registered Clearing Agencies, as well as on the entities likely to register with the Commission in the future, the Commission preliminarily believes that

⁵² 5 U.S.C. 603(a).

⁵³ Section 601(b) of the RFA permits agencies to formulate their own definitions of "small entities." The Commission has adopted definitions for the term "small entity" for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10, 17 CFR 240.0-10.

⁵⁴ See 5 U.S.C. 605(b).

⁵⁵ 17 CFR 240.0-10(d).

⁵⁶ 13 CFR 121.201, Sector 52.

such entities will not be small entities, but rather part of large business entities that exceed the thresholds defining "small entities" set out above.

For the reasons stated above, the Commission certifies that the proposed amendments to Rule 19b-4 and to the General Instructions for Form 19b-4 would not have a significant economic impact on a substantial number of small entities for the purposes of the RFA. The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities, including clearing agencies, and provide empirical data to support the extent of the impact.

IX. Statutory Basis and Text of Amendments

Pursuant to the Exchange Act, and particularly Section 19(b) thereof, 15 U.S.C. 78s(b), the Commission proposes to amend Rule 19b-4 as set forth below.

List of Subjects in 17 CFR Parts 240 and 249

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Rule

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7210 *et seq.*, 18 U.S.C. 1350, and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

■ 2. Amend § 240.19b-4 by:

- a. Adding the word "either" before the colon in the introductory text in paragraph (f)(4);
 - b. Redesignating paragraph (f)(4)(i) as paragraph (f)(4)(i)(A);
 - c. Redesignating paragraph (f)(4)(ii) as paragraph (f)(4)(i)(B);
 - d. Adding the word "or" after the semicolon after newly designated paragraph (f)(4)(i)(B);
 - e. Adding new paragraph (f)(4)(ii)(A); and
 - f. Adding new paragraph (f)(4)(ii)(B).
- 3. The additions read as follows:

⁴⁹ 15 U.S.C. 78w(a).

⁵⁰ 15 U.S.C. 78c(f).

⁵¹ 5 U.S.C. 601 *et seq.*

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

* * * * *

(f) * * *

(4) * * *

(ii)(A) Primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures; and

(B) Does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service;

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The general authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 5. Amend Form 19b–4 (referenced in § 249.819) by:

■ a. Amending paragraph (b)(iv) in Item 7 of the *General Instructions (Information to be Included in the Completed Form (“Form 19b–4 Information”))* as follows:

Note: The text of Form 19b–4 does not, and the amendments will not, appear in the Code of Federal Regulations.

Form 19b–4

* * * * *

GENERAL INSTRUCTIONS FOR FORM 19b–4

* * * * *

Information to be Included in the Completed Form (“Form 19b–4 Information”)

* * * * *

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

* * * * *

(b) * * *

(iv) effects a change in an existing service of a registered clearing agency that either (A)(1) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (2) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service or (B)(1) primarily affects the futures clearing operations of the clearing agency with

respect to futures that are not security futures and (2) does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service, and set forth the basis on which such designation is made,

* * * * *

Dated: July 7, 2011.

By the Commission.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17524 Filed 7–12–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 199**

[DoD–2009–HA–0151; 0720–AB37]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE: Inclusion of Retail Network Pharmacies as Authorized TRICARE Providers for the Administration of TRICARE Covered Vaccines

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule allows a TRICARE retail network pharmacy to be an authorized provider for the administration of TRICARE-covered vaccines in the retail pharmacy setting. The value of vaccines lies in the prevention of disease and reduced healthcare costs in the long term. When vaccines are made more readily accessible, a broader section of the population will receive them.

DATES: *Effective Date:* This final rule is effective August 12, 2011.

FOR FURTHER INFORMATION CONTACT: RADM Thomas McGinnis, TRICARE Management Activity, telephone (703) 681–2890.

SUPPLEMENTARY INFORMATION:**A. Background**

The value of vaccines lies in the prevention of disease and reduced healthcare costs in the long term. Vaccines are highly effective in preventing death and disability, and save billions of dollars in health costs annually. When vaccines are made more readily accessible, a broader section of the population will receive them. In the last 5 years, registered pharmacists have played an increasing role in providing clinical services through the retail

pharmacy venue. In 50 states, registered pharmacists are authorized to administer vaccines in a retail pharmacy setting, vastly increasing the accessibility of many vaccines. State Boards of Pharmacy are responsible for the training, oversight, and stipulating the conditions under which a pharmacist may administer a vaccine.

The Department of Defense (DoD) regulation implementing the TRICARE Pharmacy Benefit Program was written prior to this recent development. Therefore, although vaccines are covered under the TRICARE medical benefit, if administered by a pharmacist in a pharmacy the service is not currently covered by TRICARE except as provided for by the interim final rule published December 10, 2009 at 74 FR 65436. Inclusion of vaccines under the pharmacy benefit when provided by a TRICARE retail network pharmacy in accordance with state law, including when administered by a registered pharmacist, is the purpose of this regulation.

TRICARE recognizes that registered pharmacists are increasingly providing vaccine administration services in retail pharmacies. Although vaccines are a covered TRICARE medical benefit, when administered by a pharmacist claims cannot be adjudicated because vaccines are not covered under the pharmacy benefit and pharmacies are not recognized by regulation as authorized providers for the administration of vaccines except as provided for by the interim final rule. Currently, TRICARE beneficiaries who receive a vaccine administered by a pharmacist cannot be reimbursed for any out-of-pocket expenses except as provided for by the interim final rule. TRICARE would like to include vaccines under the pharmacy benefit when provided by a TRICARE retail network pharmacy when functioning within the scope of their state laws, including when administered by a registered pharmacist, to enable claims processing and reimbursement for services.

Adding immunizations to the pharmacy benefits program is an important public health initiative for TRICARE, making immunizations more readily available to beneficiaries. It is especially important as part of the Nation's public health preparations for a potential pandemic, such as was threatened last fall and winter by a novel H1N1 virus strain. Ensuring that TRICARE beneficiaries have ready access to vaccine supplies allocated to private sector pharmacies will facilitate making vaccines appropriately available to high risk groups of TRICARE

beneficiaries. The vaccines to be made available at network pharmacies under this final rule are those authorized as preventive care under the TRICARE basic program benefits at 32 CFR 199.4 and those authorized for Prime enrollees at 32 CFR 199.18, *i.e.*, immunizations for individuals age six and older, as recommended by the Centers for Disease Control and Prevention (CDC), and immunizations provided when required in the case of dependents of active duty military personnel who are traveling outside the United States as a result of an active duty member's assignment and such travel is being performed under orders issued by a Uniformed Service. Immunizations included will be those recommended by the CDC and published in the Morbidity and Mortality Weekly Report (MMWR). To find information on recommended vaccinations, TRICARE will refer beneficiaries to <http://www.cdc.gov/vaccines> or <http://www.tricare.mil/pharmacy>. TRICARE will also encourage beneficiaries to speak with their doctor or pharmacist about which vaccinations may be appropriate for them.

An Independent Government Cost Estimate (IGCE) shows an additional cost to the Defense Health Program (DHP) of approximately \$4M annually. This cost is primarily driven from beneficiaries who were not receiving the vaccines previously, or from beneficiaries who were paying out-of-pocket to get the vaccines. For the first six months following publication of the interim final rule, 18,361 vaccines were administered under the pharmacy benefits program at a cost of \$298,513.19. Had those vaccines been administered under the medical benefit, the cost to TRICARE would have been \$1.8M. These savings come both from the lower cost of the vaccines procured under the pharmacy benefits program rather than under the medical benefit which uses the Medicare payment allowance and a shift from the overall higher costs of obtaining a vaccine through a physician office visit. Expanding the number of vaccines available under the pharmacy benefits program from the three listed in the original interim final rule (seasonal influenza, H1N1 vaccine and pneumococcal vaccine) to all of those covered under the DoD's preventive care program, will result in increased savings over the cost of administering those vaccines under the medical benefit. In addition to the lower vaccine costs and costs of administration through the pharmacy benefits program, there is an anticipated cost savings which will

result from not having to treat beneficiaries who, due to a higher expected vaccination rate, will not develop the illnesses for which the vaccines were administered. For example an IGCE showed DHP savings of over \$600,000 annually in medical costs that would have been incurred in treating beneficiaries for influenza but were not because increased availability of the flu vaccine led to more beneficiaries being vaccinated.

Although the DoD is normally required to follow the same reimbursement methodologies as Medicare, there is an exception allowed when it is not practicable to do so. In calculating the administration fee for injecting these vaccines, the Department has determined that it is not practicable to follow Medicare. Medicare Part B preventive services vaccinations are limited to invasive pneumococcal disease, hepatitis B, and influenza. Medicare's administration fee schedules are adjusted for each Medicare payment locality. Therefore, there is a variation in the Medicare administration payment amount nationwide. The TRICARE pharmacy benefits program will provide many more vaccines than those available under Medicare Part B, and the Medicare rates vary by its various regions and the contractors who administer the programs in those regions. However, TRICARE has only one network retail pharmacy manager and to require the one network administrator to have various rates for the small number of drugs covered by Medicare is neither administratively feasible nor cost effective. To analyze administrative costs of the program, an IGCE compared the Medicare administration fee for the vaccines covered under Medicare Part B to the nationwide administration fees negotiated by the TRICARE pharmacy benefits manager. The results of the IGCE show the rates available to TRICARE will be lower than the rates reimbursed by Medicare.

B. Provisions of the Interim Final Rule

The interim final rule amended sections 199.6 and 199.21 of the TRICARE regulation to authorize retail network pharmacies when functioning under the scope of their state laws to provide vaccines and immunizations to eligible beneficiaries as covered TRICARE pharmacy benefits. Under the interim final rule, this authorization applied immediately to three immunizations. The three immunizations are H1N1 vaccine, seasonal influenza vaccine, and pneumococcal vaccine. In addition, the interim final rule solicited public

comment on also including other TRICARE-covered immunizations in the future for which retail network pharmacies will be authorized providers.

C. Public Comments

The interim final rule, published in the **Federal Register** December 10, 2009, provided for a 60-day comment period. DoD received seven public comments: four comments from DoD beneficiaries; two comments from professional pharmacy associations; and, one comment from a retail pharmacy chain. Comments are discussed below.

1. DoD Beneficiary Comments (4 Total)

a. Co-Payments

Comments: Two beneficiary comments were in favor of making vaccines available in retail pharmacies and asked if there would be a co-pay.

Response: The final rule makes no change to the interim final rule provision that there will be \$0.00 co-payment for vaccines/immunizations authorized as preventive care for eligible beneficiaries.

b. Expand To Include Other Vaccines

Comments: Two beneficiary comments were in favor of making vaccine available in retail pharmacies and suggested expanding the program to include other vaccines.

Response: The final rule authorizes retail network pharmacies when functioning under the scope of their state laws to provide all TRICARE-covered vaccines and immunizations.

2. Professional Pharmacy Associations (2)

Comments: Both associations highly support and applaud DoD in recognizing that services provided by pharmacists are essential in meeting the healthcare needs of all communities, especially those of TRICARE beneficiaries. Both associations were favorable to expanding the role of pharmacists, including as a community point of service for vaccine administration. Both agree that this rule brings the DoD pharmacy program in line with other insurers that have covered pharmacy/pharmacist administered vaccinations for years.

Response: DoD agrees.

3. Retail Pharmacy Chain (1)

Comment: A retail chain with 211 pharmacies in the state of Texas stated that over 70% of its pharmacists are active immunizers and have been actively providing this service for over 10 years. The chain strongly supports the expansion of the program to include

other vaccines and commends the Department for waiving cost shares.

Response: DoD agrees.

D. Provisions of Final Rule

The final rule amends sections 199.6 and 199.21 of the TRICARE regulation to authorize retail network pharmacies when functioning under the scope of their state laws to provide TRICARE authorized vaccines and immunizations to eligible beneficiaries as covered TRICARE pharmacy benefits.

E. Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Order 12866 and 13563 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. The DoD has examined the economic and policy implications of this final rule and has concluded that it is not a significant regulatory action.

Congressional Review Act, 5 U.S.C. 801, et seq.

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100 million or more or have certain other impacts. This rule is not a major rule under the Congressional Review Act.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

This rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule does not have a significant impact on a substantial number of small entities.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

This final rule does include information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511). The information collection has been approved with the Office of Management and Budget control number 0720-0032.

Executive Order 13132, "Federalism"

This rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on the States; the relationship between the National Government and the States; or the distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 199

Claims, Health care, Health insurance, Military personnel, Pharmacy benefits.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C., Chapter 55.

■ 2. Section 199.6 is amended by revising paragraph (d)(3) to read as follows:

§ 199.6 TRICARE—authorized providers.

* * * * *

(d) * * *

(3) *Pharmacies.* Pharmacies must meet the applicable requirements of state law in the state in which the pharmacy is located. In addition to being subject to the policies and procedures for authorized providers established by this section, additional policies and procedures may be established for authorized pharmacies under § 199.21 of this part implementing the Pharmacy Benefits Program.

* * * * *

■ 3. Section 199.21 is amended by revising the heading of paragraph (h), and adding new paragraphs (h)(4) and (i)(2)(ii)(D) to read as follows:

§ 199.21 Pharmacy benefits program.

* * * * *

(h) *Obtaining pharmacy services under the retail network pharmacy benefits program.* * * *

(4) *Availability of vaccines/immunizations.* A retail network pharmacy may be an authorized provider under the Pharmacy Benefits

Program when functioning within the scope of its state laws to provide authorized vaccines/immunizations to an eligible beneficiary. The Pharmacy Benefits Program will cover the vaccine and its administration by the retail network pharmacy, including administration by pharmacists who meet the applicable requirements of state law to administer the vaccine. A TRICARE authorized vaccine/immunization includes only vaccines/immunizations authorized as preventive care under the basic program benefits of § 199.4 of this part, as well as such care authorized for Prime enrollees under the uniform HMO benefit of § 199.18. For Prime enrollees under the uniform HMO benefit, a referral is not required under paragraph (n)(2) of § 199.18 for preventive care vaccines/immunizations received from a retail network pharmacy that is a TRICARE authorized provider. Any additional policies, instructions, procedures, and guidelines appropriate for implementation of this benefit may be issued by the TMA Director.

(i) * * *

(2) * * *

(ii) * * *

(D) \$0.00 co-payment for vaccines/immunizations authorized as preventive care for eligible beneficiaries.

* * * * *

Dated: July 5, 2011.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2011-17516 Filed 7-12-11; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2011-0264

RIN 1625-AA00

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending 33 CFR 165.929 Safety Zones; Annual Events requiring safety zones in the Captain of the Port Lake Michigan zone. This rule will amend, establish, or delete the rules that restrict vessels from portions of water areas during events that pose a hazard to public safety. The safety zones amended or established by

this rule are necessary to protect spectators, participants, and vessels from the hazards associated with various maritime events.

DATES: This rule is effective August 12, 2011.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG-2011-0264 and are available online at <http://www.regulations.gov>. This material is also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747-7148 or e-mail him at Adam.D.Kraft@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

Regulatory Information

On May 24, 2011, we published a notice of proposed rulemaking entitled Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone in the **Federal Register** (76 FR 30072). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Currently, 33 CFR 165.929 lists eighty-three different locations in the Captain of the Port Lake Michigan zone at which safety zones have been permanently established. Each of these eighty-three safety zones correspond to an annually recurring marine event. On April 1, 2011, the Coast Guard refined the internal boundaries of its Ninth District, resulting in changes to the Captain of the Port Lake Michigan zone. Consequently, eleven of the aforementioned eighty-three safety zones are now located within the Captain of the Port Sault Ste. Marie zone. In addition to the boundary change initiated by the Coast Guard, the

details of four of the annually recurring events have changed. Finally, the Captain of the Port, Sector Lake Michigan has determined that three additional recurring marine events require the implementation of permanent safety zones.

Discussion of Comments and Changes

No comments were received regarding this rule.

Discussion of Rule

This rule amends the regulations found in 33 CFR 165.929, Annual Events requiring safety zones in the Captain of the Port Lake Michigan zone. Specifically, this rule will revise § 165.929 in its entirety. The revision will include the deletion of eleven of the safety zones; the modification of the name, location, and enforcement periods of four other safety zones; and the addition of three new safety zones. These safety zones are necessary to protect vessels and people from the hazards associated with firework displays, boat races, and other marine events. Such hazards include obstructions to the navigable channels, explosive dangers associated with fireworks, debris falling into the water, high speed boat racing, and general congestion of waterways. Although this rule will remain in effect year round, the safety zones within it will be enforced only immediately before, during, and after each corresponding marine event.

The Captain of the Port, Sector Lake Michigan, will notify the public when the safety zones in this rule will be enforced. In keeping with 33 CFR 165.7(a), the Captain of the Port, Sector Lake Michigan, will use all appropriate means to notify the affected segments of the public. This will include, as practicable, publication in the **Federal Register**, Broadcast Notice to Mariners and/or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will, as practicable, issue a Broadcast Notice to Mariners notifying the public when any enforcement period is cancelled.

Entry into, transiting, or anchoring within each of the safety zones is prohibited during an enforcement period unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative. All persons and vessels permitted to enter one of the safety zones established by this rule shall comply with the instructions of the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his

or her designated representative may be contacted via VHF Channel 16.

Regulatory Analysis

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones created by this rule will be relatively small and enforced for relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Furthermore, each safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each safety zone when permitted by the Captain of the Port, Sector Lake Michigan. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following

entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in any one of the below established safety zones while the safety zone is being enforced. These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Each safety zone in this rule will be in effect for only a few hours within any given 24 hour period. Each of the safety zones will be in effect only once per year. Furthermore, these safety zones have been designed to allow traffic to pass safely around each zone. Moreover, vessels will be allowed to pass through each zone at the discretion of the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

On May 25, 2011, the Coast Guard published a notice of proposed rule making entitled Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone in the **Federal Register** (76 FR 12374). The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

On May 25, 2011, the Coast Guard published a notice of proposed rule making entitled Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone in the **Federal Register** (76 FR 12374). The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed.

Taking of Private Property

This rule will not affect the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

On May 25, 2011, the Coast Guard published a notice of proposed rule making entitled Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone in the **Federal Register** (76 FR 12374). The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

On May 25, 2011, the Coast Guard published a notice of proposed rule making entitled Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone in the **Federal Register** (76 FR 12374). The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

would not create an environmental risk to health or risk to safety that might disproportionately affect children.

On May 25, 2011, the Coast Guard published a notice of proposed rule making entitled Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone in the **Federal Register** (76 FR 12374). The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

On May 25, 2011, the Coast Guard published a notice of proposed rule making entitled Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone in the **Federal Register** (76 FR 12374). The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

On May 25, 2011, the Coast Guard published a notice of proposed rule making entitled Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone in the **Federal Register** (76 FR 12374). The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

On May 25, 2011, the Coast Guard published a notice of proposed rule making entitled Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone in the **Federal Register** (76 FR 12374). The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction because it involves the establishment, disestablishment, and changing of safety zones.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.929 to read as follows:

§ 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone.

(a) St. Patrick's Day Fireworks; Manitowoc, WI.

(1) *Location.* All waters of the Manitowoc River and Manitowoc Harbor, near the mouth of the Manitowoc River on the south shore, within the arc of a circle with a 100-foot radius from the fireworks launch site located in position 44°05'30" N, 087°39'12" W (NAD 83).

(2) *Enforcement date and time.* The third Saturday of March; 5:30 p.m. to 7 p.m.

(b) Michigan Aerospace Challenge Sport Rocket Launch; Muskegon, MI.

(1) *Location.* All waters of Muskegon Lake, near the West Michigan Dock and Market Corp facility, within the arc of a circle with a 1500-yard radius from the rocket launch site located in position 43°14'21" N, 086°15'35" W (NAD 83).

(2) *Enforcement date and time.* The last Saturday of April; 8 a.m. to 4 p.m.

(c) Tulip Time Festival Fireworks; Holland, MI.

(1) *Location.* All waters of Lake Macatawa, near Kollen Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site in position 42°47'23" N, 086°07'22" W (NAD 83).

(2) *Enforcement date and time.* The first Friday of May; 7 p.m. to 11 p.m. If the Friday fireworks are cancelled due to inclement weather, then this safety zone will be enforced on the first Saturday of May; 7 p.m. to 11 p.m.

(d) Rockets for Schools Rocket Launch; Sheboygan, WI.

(1) *Location.* All waters of Lake Michigan and Sheboygan Harbor, near the Sheboygan South Pier, within the arc of a circle with a 1500-yard radius from the rocket launch site located with its center in position 43°44'55" N, 087°41'52" W (NAD 83).

(2) *Enforcement date and time.* The first Saturday of May; 8 a.m. to 5 p.m.

(e) Celebrate De Pere; De Pere, WI.

(1) *Location.* All waters of the Fox River, near Voyageur Park, within the arc of a circle with a 500 foot radius from the fireworks launch site located in position 44°27'10" N, 088°03'50" W (NAD 83).

(2) *Enforcement date and time.* The Sunday before Memorial Day; 8:30 p.m. to 10 p.m.

(f) Michigan Super Boat Grand Prix; Michigan City, IN.

(1) *Location.* All waters of Lake Michigan in the vicinity of Michigan City, IN. bound by a line drawn from 41°43'42" N, 086°54'18" W; then north to 41°43'49" N, 086°54'31" W; then east to 41°44'48" N, 086°51'45" W; then south to 41°44'42" N, 086°51'31" W; then west returning to the point of origin. (NAD 83)

(2) *Enforcement date and time.* The first Sunday of August; 9 a.m. to 4 p.m.

(g) River Splash; Milwaukee, WI.

(1) *Location.* All waters of the Milwaukee River, near Pere Marquette Park, within the arc of a circle with a 300-foot radius from the fireworks launch site located on a barge in position 43°02'32" N, 087°54'45" W (NAD 83).

(2) *Enforcement date and time.* The first Friday and Saturday of June; 9 p.m. to 11 p.m. each day.

(h) International Bayfest; Green Bay, WI.

(1) *Location.* All waters of the Fox River, near the Western Lime Company 1.13 miles above the head of the Fox River, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°31'24" N, 088°00'42" W (NAD 83).

(2) *Enforcement date and time.* The second Friday of June; 9 p.m. to 11 p.m.

(i) Harborfest Music and Family Festival; Racine, WI.

(1) *Location.* All waters of Lake Michigan and Racine Harbor, near the Racine Launch Basin Entrance Light, within the arc of a circle with a 200-foot radius from the fireworks launch site located in position 42°43'43" N, 087°46'40" W (NAD 83).

(2) *Enforcement date and time.* Friday and Saturday of the third complete weekend of June; 9 p.m. to 11 p.m. each day.

(j) Spring Lake Heritage Festival Fireworks; Spring Lake, MI.

(1) *Location.* All waters of the Grand River, near buoy 14A, within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 43°04'24" N, 086°12'42" W (NAD 83).

(2) *Enforcement date and time.* The third Saturday of June; 9 p.m. to 11 p.m.

(k) Elberta Solstice Festival Fireworks; Elberta, MI.

(1) *Location.* All waters of Betsie Bay, near Waterfront Park, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 44°37'43" N, 086°14'27" W (NAD 83).

(2) *Enforcement date and time.* The last Saturday of June; 9 p.m. to 11 p.m.

(l) Pentwater July Third Fireworks; Pentwater, MI.

(1) *Location*. All waters of Lake Michigan and the Pentwater Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°46'57" N, 086°26'38" W (NAD 83).

(2) *Enforcement date and time*. July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(m) Taste of Chicago Fireworks; Chicago, IL.

(1) *Location*. All waters of Monroe Harbor and all waters of Lake Michigan bounded by a line drawn from 41°53'24" N, 087°35'59" W; then east to 41°53'15" N, 087°35'26" W; then south to 41°52'49" N, 087°35'26" W; then southwest to 41°52'27" N, 087°36'37" W; then north to 41°53'15" N, 087°36'33" W; then east returning to the point of origin (NAD 83).

(2) *Enforcement date and time*. July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(n) U.S. Bank Fireworks; Milwaukee, WI.

(1) *Location*. All waters and adjacent shoreline of Milwaukee Harbor, in the vicinity of Veteran's Park, within the arc of a circle with a 1200-foot radius from the center of the fireworks launch site which is located on a barge with its approximate position located at 43°02'22" N, 087°53'29" W (NAD 83).

(2) *Enforcement date and time*. July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(o) Independence Day Fireworks; Manistee, MI.

(1) *Location*. All waters of Lake Michigan, in the vicinity of the First Street Beach, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°14'51" N, 086°20'46" W (NAD 83).

(2) *Enforcement date and time*. July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(p) Frankfort Independence Day Fireworks; Frankfort, MI.

(1) *Location*. All waters of Lake Michigan and Frankfort Harbor, bounded by a line drawn from 44°38'05" N, 086°14'50" W; then south to 44°37'39" N, 086°14'50" W; then west to 44°37'39" N, 086°15'20" W; then north to 44°38'05" N, 086°15'20" W; then east returning to the point of origin (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks

are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(q) Freedom Festival Fireworks; Ludington, MI.

(1) *Location*. All waters of Lake Michigan and Ludington Harbor, in the vicinity of the Loomis Street Boat Ramp, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°57'16" N, 086°27'42" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(r) White Lake Independence Day Fireworks; Montague, MI.

(1) *Location*. All waters of White Lake, in the vicinity of the Montague boat launch, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°24'33" N, 086°21'28" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(s) Muskegon Summer Celebration July Fourth Fireworks; Muskegon, MI.

(1) *Location*. All waters of Muskegon Lake, in the vicinity of Heritage Landing, within the arc of a circle with a 1000-foot radius from a fireworks launch site located on a barge in position 43°14'00" N, 086°15'50" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(3) Impact on Special Anchorage Area regulations: Regulations for that portion of the Muskegon Lake East Special Anchorage Area, as described in 33 CFR 110.81(b), which are overlapped by this regulation, are suspended during this event. The remaining area of the Muskegon Lake East Special Anchorage Area not impacted by this regulation remains available for anchoring during this event.

(t) Grand Haven Jaycees Annual Fourth of July Fireworks; Grand Haven, MI.

(1) *Location*. All waters of The Grand River between longitude 087°14'00" W, near The Sag, then west to longitude 087°15'00" W, near the west end of the south pier (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(u) Celebration Freedom Fireworks; Holland, MI.

(1) *Location*. All waters of Lake Macatawa, in the vicinity of Kollen Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°47'23" N, 086°07'22" W (NAD 83).

(2) *Enforcement date and time*. July 4, 2007; 9 p.m. to 11 p.m. Thereafter, this section will be enforced the Saturday prior to July 4; 9 p.m. to 11 p.m. If the fireworks are cancelled due to inclement weather, then this safety zone will be enforced the Sunday prior to July 4; 9 p.m. to 11 p.m.

(v) Van Andel Fireworks Show; Holland, MI.

(1) *Location*. All waters of Lake Michigan and the Holland Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°46'21" N, 086°12'48" W (NAD 83).

(2) *Enforcement date and time*. July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(w) Independence Day Fireworks; Saugatuck, MI.

(1) *Location*. All waters of Kalamazoo Lake within the arc of a circle with a 1000-foot radius from the fireworks launch site in position 42°38'52" N, 086°12'18" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(x) South Haven Fourth of July Fireworks; South Haven, MI.

(1) *Location*. All waters of Lake Michigan and the Black River within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°24'08" N, 086°17'03" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(y) St. Joseph Fourth of July Fireworks; St. Joseph, MI.

(1) *Location*. All waters of Lake Michigan and the St. Joseph River within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°06'48" N, 086°29'5" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(z) Town of Dune Acres Independence Day Fireworks; Dune Acres, IN.

(1) *Location*. All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°39'23" N, 087°04'59" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(aa) Gary Fourth of July Fireworks; Gary, IN.

(1) *Location*. All waters of Lake Michigan, approximately 2.5 miles east of Gary Harbor, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 41°37'19" N, 087°14'31" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(bb) Joliet Independence Day Celebration Fireworks; Joliet, IL.

(1) *Location*. All waters of the Des Plaines River, at mile 288, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 41°31'31" N, 088°05'15" W (NAD 83).

(2) *Enforcement date and time*. July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(cc) Glencoe Fourth of July Celebration Fireworks; Glencoe, IL.

(1) *Location*. All waters of Lake Michigan, in the vicinity of Lake Front Park, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 42°08'17" N, 087°44'55" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(dd) Lakeshore Country Club Independence Day Fireworks; Glencoe, IL.

(1) *Location*. All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°08'27" N, 087°44'57" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(ee) Shore Acres Country Club Independence Day Fireworks; Lake Bluff, IL.

(1) *Location*. All waters of Lake Michigan, approximately one mile north of Lake Bluff, IL, within the arc of a circle with a 1000-foot radius from the

fireworks launch site located in position 42°17'59" N, 087°50'03" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(ff) Kenosha Independence Day Fireworks; Kenosha, WI.

(1) *Location*. All waters of Lake Michigan and Kenosha Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°35'17" N, 087°48'27" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(gg) Fourthfest of Greater Racine Fireworks; Racine, WI.

(1) *Location*. All waters of Lake Michigan and Racine Harbor, in the vicinity of North Beach, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°44'17" N, 087°46'42" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(hh) Sheboygan Fourth of July Celebration Fireworks; Sheboygan, WI.

(1) *Location*. All waters of Lake Michigan and Sheboygan Harbor, in the vicinity of the south pier, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°44'55" N, 087°41'51" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(ii) Manitowoc Independence Day Fireworks; Manitowoc, WI.

(1) *Location*. All waters of Lake Michigan and Manitowoc Harbor, in the vicinity of south breakwater, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°05'24" N, 087°38'45" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(jj) Sturgeon Bay Independence Day Fireworks; Sturgeon Bay, WI.

(1) *Location*. All waters of Sturgeon Bay, in the vicinity of Sunset Park, within the arc of a circle with a 1000-foot radius from the fireworks launch

site located on a barge in position 44°50'37" N, 087°23'18" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(kk) Fish Creek Independence Day Fireworks; Fish Creek, WI.

(1) *Location*. All waters of Green Bay, in the vicinity of Fish Creek Harbor, within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 45°07'52" N, 087°14'37" W (NAD 83).

(2) *Enforcement date and time*. The first Saturday after July 4; 9 p.m. to 11 p.m.

(ll) Celebrate Americafest Fireworks; Green Bay, WI.

(1) *Location*. All waters of the Fox River between the railroad bridge located 1.03 miles above the mouth of the Fox River and the Main Street Bridge located 1.58 miles above the mouth of the Fox River, including all waters of the turning basin east to the mouth of the East River.

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(mm) Marinette Fourth of July Celebration Fireworks; Marinette, WI.

(1) *Location*. All waters of the Menominee River, in the vicinity of Stephenson Island, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 45°06'09" N, 087°37'39" W and all waters located between the Highway U.S. 41 bridge and the Hattie Street Dam (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(nn) Evanston Fourth of July Fireworks; Evanston, IL.

(1) *Location*. All waters of Lake Michigan, in the vicinity of Centennial Park Beach, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 42°02'56" N, 087°40'21" W (NAD 83).

(2) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(oo) Muskegon Summer Celebration Fireworks; Muskegon, MI.

(1) *Location*. All waters of Muskegon Lake, in the vicinity of Heritage Landing, within the arc of a circle with a 1000-foot radius from a fireworks

barge located in position 43°14'00" N, 086°15'50" W (NAD 83).

(2) *Enforcement date and time.* The Sunday following July 4; 9 p.m. to 11 p.m.

(3) Impact on Special Anchorage Area regulations: Regulations for that portion of the Muskegon Lake East Special Anchorage Area, as described in 33 CFR 110.81(b), which are overlapped by this regulation, are suspended during this event. The remaining area of the Muskegon Lake East Special Anchorage Area is not impacted by this regulation and remains available for anchoring during this event.

(pp) Gary Air and Water Show; Gary, IN.

(1) *Location.* All waters of Lake Michigan bounded by a line drawn from 41°37'42" N, 087°16'38" W; then east to 41°37'54" N, 087°14'00" W; then south to 41°37'30" N, 087°13'56" W; then west to 41°37'17" N, 087°16'36" W; then north returning to the point of origin (NAD 83).

(2) *Enforcement date and time.* Friday, Saturday, and Sunday of the second weekend of July; from 10 a.m. to 9 p.m. each day.

(qq) Milwaukee Air and Water Show; Milwaukee, WI.

(1) *Location.* All waters and adjacent shoreline of Lake Michigan and Bradford Beach located within a 4000-yard by 1000-yard rectangle. The rectangle will be bounded by the points beginning at points beginning at 43°02'50" N, 087°52'36" W; then northeast to 43°04'33" N, 087°51'12" W; then northwest to 43°04'40" N, 087°51'29" W; then southwest to 43°02'57" N, 087°52'53" W; the southeast returning to the point of origin (NAD 83).

(2) *Enforcement date and time.* Thursday, Friday, Saturday, and Sunday of the first weekend of August; from 10 a.m. to 5 p.m. each day.

(rr) Annual Trout Festival Fireworks; Kewaunee, WI.

(1) *Location.* All waters of Kewaunee Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°27'29" N, 087°29'45" W (NAD 83).

(2) *Enforcement date and time.* Friday of the second complete weekend of July; 9 p.m. to 11 p.m.

(ss) Michigan City Summerfest Fireworks; Michigan City, IN.

(1) *Location.* All waters of Michigan City Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°43'42" N, 086°54'37" W (NAD 83).

(2) *Enforcement date and time.* Sunday of the first complete weekend of July; 9 p.m. to 11 p.m.

(tt) Port Washington Fish Day Fireworks; Port Washington, WI.

(1) *Location.* All waters of Port Washington Harbor and Lake Michigan, in the vicinity of the WE Energies coal dock, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°23'07" N, 087°51'54" W (NAD 83).

(2) *Enforcement date and time.* The third Saturday of July; 9 p.m. to 11 p.m.

(uu) Bay View Lions Club South Shore Frolics Fireworks; Milwaukee, WI.

(1) *Location.* All waters of Milwaukee Harbor and Lake Michigan, in the vicinity of South Shore Park, within the arc of a circle with a 500-foot radius from the fireworks launch site in position 42°59'42" N, 087°52'52" W (NAD 83).

(2) *Enforcement date and time.* Friday, Saturday, and Sunday of the second or third weekend of July; 9 p.m. to 11 p.m. each day.

(vv) Venetian Festival Fireworks; St. Joseph, MI.

(1) *Location.* All waters of Lake Michigan and the St. Joseph River, near the east end of the south pier, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°06'48" N, 086°29'15" W (NAD 83).

(2) *Enforcement date and time.* Saturday of the third complete weekend of July; 9 p.m. to 11 p.m.

(ww) Joliet Waterway Daze Fireworks; Joliet, IL.

(1) *Location.* All waters of the Des Plaines River, at mile 287.5, within the arc of a circle with a 300-foot radius from the fireworks launch site located in position 41°31'15" N, 088°05'17" W (NAD 83).

(2) *Enforcement date and time.* Friday and Saturday of the third complete weekend of July; 9 p.m. to 11 p.m. each day.

(xx) EAA Airventure; Oshkosh, WI.

(1) *Location.* All waters of Lake Winnebago bounded by a line drawn from 43°57'30" N, 088°30'00" W; then south to 43°56'56" N, 088°29'53" W, then east to 43°56'40" N, 088°28'40" W; then north to 43°57'30" N, 088°28'40" W; then west returning to the point of origin (NAD 83).

(2) *Enforcement date and time.* The last complete week of July, beginning Monday and ending Sunday; from 8 a.m. to

8 p.m. each day.

(yy) Venetian Night Fireworks; Saugatuck, MI.

(1) *Location.* All waters of Kalamazoo Lake within the arc of a circle with a

500-foot radius from the fireworks launch site located on a barge in position 42°38'52" N, 086°12'18" W (NAD 83).

(2) *Enforcement date and time.* The last Saturday of July; 9 p.m. to 11 p.m.

(zz) Roma Lodge Italian Festival Fireworks; Racine, WI.

(1) *Location.* All waters of Lake Michigan and Racine Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°44'04" N, 087°46'20" W (NAD 83).

(2) *Enforcement date and time.* Friday and Saturday of the last complete weekend of July; 9 p.m. to 11 p.m.

(aaa) Venetian Night Fireworks; Chicago, IL.

(1) *Location.* All waters of Monroe Harbor and all waters of Lake Michigan bounded by a line drawn from 41°53'03" N, 087°36'36" W; then east to 41°53'03" N, 087°36'21" W; then south to 41°52'27" N, 087°36'21" W; then west to 41°52'27" N, 087°36'37" W; then north returning to the point of origin (NAD 83).

(2) *Enforcement date and time.* Saturday of the last weekend of July; 9 p.m. to 11 p.m.

(bbb) Port Washington Maritime Heritage Festival Fireworks; Port Washington, WI.

(1) *Location.* All waters of Port Washington Harbor and Lake Michigan, in the vicinity of the WE Energies coal dock, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°23'07" N, 087°51'54" W (NAD 83).

(2) *Enforcement date and time.* Saturday of the last complete weekend of July or the second weekend of August; 9 p.m. to 11 p.m.

(ccc) Grand Haven Coast Guard Festival Fireworks; Grand Haven, MI.

(1) *Location.* All waters of the Grand River between longitude 087°14'00" W, near The Sag, then west to longitude 087°15'00" W, near the west end of the south pier (NAD 83).

(2) *Enforcement date and time.* First weekend of August; 9 p.m. to 11 p.m.

(ddd) Sturgeon Bay Yacht Club Evening on the Bay Fireworks; Sturgeon Bay, WI.

(1) *Location.* All waters of Sturgeon Bay, in the vicinity of the Sturgeon Bay Yacht Club, within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 44°49'33" N, 087°22'26" W (NAD 83).

(2) *Enforcement date and time.* The first Saturday of August; 9 p.m. to 11 p.m.

(eee) Hammond Marina Venetian Night Fireworks; Hammond, IN.

(1) *Location*. All waters of Hammond Marina and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°41'53" N, 087°30'43" W (NAD 83).

(2) *Enforcement date and time*. The first Saturday of August; 9 p.m. to 11 p.m.

(fff) North Point Marina Venetian Festival Fireworks; Winthrop Harbor, IL.

(1) *Location*. All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°28'55" N, 087°47'56" W (NAD 83).

(2) *Enforcement date and time*. The second Saturday of August; 9 p.m. to 11 p.m.

(ggg) Waterfront Festival Fireworks; Menominee, MI.

(1) *Location*. All waters of Green Bay, in the vicinity of Menominee Marina, within the arc of a circle with a 1000-foot radius from a fireworks barge in position 45°06'17" N, 087°35'48" W (NAD 83).

(2) *Enforcement date and time*. Saturday following first Thursday in August; 9 p.m. to 11 p.m.

(hhh) Ottawa Riverfest Fireworks; Ottawa, IL.

(1) *Location*. All waters of the Illinois River, at mile 239.7, within the arc of a circle with a 300-foot radius from the fireworks launch site located in position 41°20'29" N, 088°51'20" W (NAD 83).

(2) *Enforcement date and time*. The first Sunday of August; 9 p.m. to 11 p.m.

(iii) Algoma Shanty Days Fireworks; Algoma, WI.

(1) *Location*. All waters of Lake Michigan and Algoma Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°36'24" N, 087°25'54" W (NAD 83).

(2) *Enforcement date and time*. Sunday of the second complete weekend of August; 9 p.m. to 11 p.m.

(jjj) New Buffalo Ship and Shore Festival Fireworks; New Buffalo, MI.

(1) *Location*. All waters of Lake Michigan and New Buffalo Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°48'09" N, 086°44'49" W (NAD 83).

(2) *Enforcement date and time*. The second Sunday of August; 9 p.m. to 11 p.m.

(kkk) Pentwater Homecoming Fireworks; Pentwater, MI.

(1) *Location*. All waters of Lake Michigan and the Pentwater Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°46'56.5" N, 086°26'38" W (NAD 83).

(2) *Enforcement date and time*. Saturday following the second Thursday of August; 9 p.m. to 11 p.m.

(lll) Chicago Air and Water Show; Chicago, IL.

(1) *Location*. All waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from 41°55'54" N at the shoreline, then east to 41°55'54" N, 087°37'12" W, then southeast to 41°54'00" N, 087°36'00" W (NAD 83), then southwestward to the northeast corner of the Jardine Water Filtration Plant, then due west to the shore.

(2) *Enforcement date and time*. The third Thursday, Friday, Saturday, and Sunday of August; from 9 a.m. to 6 p.m. each day.

(mmm) Downtown Milwaukee BID 21 Fireworks; Milwaukee, WI.

(1) *Location*. All waters of the Milwaukee River between the Kilbourn Avenue Bridge at 1.7 miles above the Milwaukee Pierhead Light to the State Street Bridge at 1.79 miles above the Milwaukee Pierhead Light.

(2) *Enforcement date and time*. The third Thursday of November; 6 p.m. to 8 p.m.

(nnn) New Years Eve Fireworks; Chicago, IL.

(1) *Location*. All waters of Monroe Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 41°52'41" N, 087°36'37" W (NAD 83).

(2) *Enforcement date and time*. December 31; 11 p.m. to January 1; 1 a.m.

(ooo) Cochrane Cup; Blue Island, IL.

(1) *Location*. All waters of the Calumet Saganashkee Channel from the South Halstead Street Bridge at 41°39'27" N, 087°38'29" W; to the Crawford Avenue Bridge at 41°39'05" N, 087°43'08" W; and the Little Calumet River from the Ashland Avenue Bridge at 41°39'7" N, 087°39'38" W; to the junction of the Calumet Saganashkee Channel at 41°39'23" N, 087°39'00" W (NAD 83).

(2) *Enforcement date and time*. The first Saturday of May; 6:30 a.m. to 5 p.m.

(ppp) World War II Beach Invasion Re-enactment; St. Joseph, MI.

(1) *Location*. All waters of Lake Michigan in the vicinity of Tiscornia Park in St. Joseph, MI beginning at 42°06'55" N, 086°29'23" W; then west/northwest along the north breakwater to 42°06'59" N, 086°29'41" W; the northwest 100 yards to 42°07'01" N, 086°29'44" W; then northeast 2,243 yards to 42°07'50" N, 086°28'43" W; the southeast to the shoreline at 42°07'39" N, 086°28'27" W; then southwest along

the shoreline to the point of origin (NAD 83).

(2) *Enforcement date and time*. The third Saturday of June; 8 a.m. to 2 p.m.

(qqq) Ephraim Fireworks; Ephraim, WI.

(1) *Location*. All waters of Eagle Harbor and Lake Michigan within the arc of a circle with a 750-foot radius from the fireworks launch site located on a barge in position 45°09'18" N, 087°10'51" W (NAD 83).

(2) *Enforcement date and time*. The third Saturday of June; 9 p.m. to 11 p.m.

(rrr) Thunder on the Fox; Elgin, IL.

(1) *Location*. All waters of the Fox River, near Elgin, Illinois, between Owasco Avenue, located at approximate position 42°03'06" N, 088°17'28" W and the Kimball Street bridge, located at approximate position 42°02'31" N, 088°17'22" W (NAD 83).

(2) *Enforcement date and time*. Friday, Saturday, and Sunday of the third weekend in June; 10 a.m. to 7 p.m. each day.

(i) *Definitions*. The following definitions apply to this section:

(A) Designated representative means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port, Sector Lake Michigan, to monitor a safety zone, permit entry into a zone, give legally enforceable orders to persons or vessels within a safety zone, and take other actions authorized by the Captain of the Port, Sector Lake Michigan.

(B) Public vessel means a vessel that is owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(ii) *Regulations*.

(A) The general regulations in 33 CFR 165.23 apply.

(B) All persons and vessels must comply with the instructions of the Captain of the Port, Sector Lake Michigan, or his or her designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(C) All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her designated representative to enter, move within or exit a safety zone established in this section when the safety zone is enforced. Vessels and persons granted permission to enter one of the safety zones listed in this section shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her designated representative. While within a safety zone, all vessels shall operate at the

minimum speed necessary to maintain a safe course.

(iii) *Suspension of Enforcement.* If the Captain of the Port, Sector Lake Michigan, suspends enforcement of any of these zones earlier than listed in this section, the Captain of the Port, Sector Lake Michigan, or his or her designated representative will notify the public by suspending the respective Broadcast Notice to Mariners.

(iv) *Exemption.* Public vessels, as defined in paragraph (B) of this section, are exempt from the requirements in this section.

(v) *Waiver.* For any vessel, the Captain of the Port, Sector Lake Michigan, or his or her designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: June 29, 2011.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011-17635 Filed 7-12-11; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0803]

RIN 1625-AA87

Security Zones; Sector Southeastern New England Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing security zones around cruise ships in the Southeastern New England Captain of the Port (COTP) Zone. This final rule creates a 100-yard radius security zone encompassing all navigable waters around any cruise ship anchored or moored, and 200-yard radius security zone encompassing all navigable waters around any cruise ship underway that is being escorted by Coast Guard or law enforcement agencies assisting the Coast Guard. These zones are needed to protect cruise ships and the public from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. Persons or vessels may not enter these security zones without permission

of the COTP or a COTP designated representative.

DATES: This rule is effective August 12, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2010-0803 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0803 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Edward G. LeBlanc, Chief, Waterways Management Division, Coast Guard Sector Southeastern New England, at 401-435-2351, or Edward.G.LeBlanc@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 5, 2011, we published a notice of proposed rulemaking (NPRM) entitled Security Zones; Sector Southeastern New England Captain of the Port Zone in the **Federal Register** (76 FR 18674). We received no comments on the proposed rule.

Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorizes the Coast Guard to define Security Zones.

The Coast Guard's maritime security mission includes the requirement to protect cruise ships from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. Protecting these vessels from potential threats or harm while transiting, or while moored, at any berth, or at anchor in the waters of Southeastern New England COTP Zone is necessary to safeguard cruise ships and the general public. The Coast Guard is establishing a permanent regulation that creates security zones for all navigable waters around certain cruise

ships in the Southeastern New England COTP Zone.

Background

On September 22, 2010, the COTP Southeastern New England issued a temporary final rule that established 33 CFR 165.T01-0864 which created security zones nearly identical to the security zones created by this rule. See Security Zone: Passenger Vessels, Southeastern New England Captain of the Port Zone, 75 FR 63714, October 18, 2010. In a rule published March 31, 2011 (FR Doc. 2011-7640), temporary § 165.T01-0864 was extended through October 1, 2011. This final rule removes a temporary security zone regulation in § 165.T01-0864. On April 5, 2011, we published a notice of proposed rulemaking (NPRM) entitled Security Zones; Sector Southeastern New England Captain of the Port Zone in the **Federal Register** (76 FR 18674). We received no comments on the proposed rule.

Discussion of Comments and Changes

No comments were received in response to the NPRM, and no changes from the proposed rule have been made.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. These security zones will be activated and enforced only when a cruise ship is transiting, anchored, or moored within the Southeastern New England COTP zone. Persons and/or vessels may enter a security zone if they obtain permission from the Coast Guard COTP, Southeastern New England.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. These security zones will be enforced only when a vessel is transiting within the Southeastern New England COTP zone (a routine transit is usually two hours or less), and only when enforced by Coast Guard law enforcement personnel. Persons and/or vessels may enter a security zone if they obtain permission from the Coast Guard COTP, Southeastern New England.

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or transit within the security zones when a cruise ship is transiting, anchored or moored.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. These security zones are temporary, and will be enforced only either when a vessel is transiting within the Southeastern New England COTP zone (a routine transit is usually two hours or less) or anchored or moored in the Zone. Persons and/or vessels may enter a security zone if they obtain permission from the Coast Guard COTP, Southeastern New England.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule in accordance with Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f) and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraphs (34)(g) of the Instruction because it involves establishment of security zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Remove § 165.T01–0864 Security Zone; Escorted Passenger Vessels,

Sector Southeastern New England Captain of the Port Zone.

■ 3. Add § 165.123 to read as follows:

§ 165.123 Cruise Ships, Sector Southeastern New England Captain of the Port (COTP) Zone.

(a) *Location.* The following areas are security zones: All navigable waters within the Southeastern New England Captain of the Port (COTP) Zone, extending from the surface to the sea floor:

(1) Within a 200-yard radius of any cruise ship that is underway and is under escort of U.S. Coast Guard law enforcement personnel or designated representative, or

(2) Within a 100-yard radius of any cruise ship that is anchored, at any berth or moored.

(b) *Definitions.* For the purposes of this section—

Cruise ship means a passenger vessel as defined in 46 U.S.C. 2101(22), that is authorized to carry more than 400 passengers and is 200 or more feet in length. A *cruise ship* under this section will also include ferries as defined in 46 CFR 2.10–25 that are authorized to carry more than 400 passengers and are 200 feet or more in length.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. The designated representative may be on a Coast Guard vessel, or onboard Federal, state, or a local agency vessel that is authorized to act in support of the Coast Guard.

Southeastern New England COTP Zone is as defined in 33 CFR 3.05–20.

(c) *Enforcement.* The security zones described in this section will be activated and enforced upon entry of any cruise ship into the navigable waters of the United States (see 33 CFR 2.36(a) to include the 12 NM territorial sea) in the Southeastern New England COTP zone. This zone will remain activated at all times while a cruise ship is within the navigable waters of the United States in the Sector Southeastern New England COTP Zone. In addition, the Coast Guard may broadcast the area designated as a security zone for the duration of the enforcement period via Broadcast Notice to Mariners.

(d) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel may enter or move within the security zones created by this section unless granted permission to do so by the COTP Southeastern New England or the designated representative.

(2) All persons and vessels granted permission to enter a security zone must

comply with the instructions of the COTP or the designated representative. Emergency response vessels are authorized to move within the zone, but must abide by the restrictions imposed by the COTP or the designated representative.

(3) No person may swim upon or below the surface of the water within the boundaries of these security zones unless previously authorized by the COTP or his designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Vessel operators desiring to enter or operate within the security zone shall contact the COTP or the designated representative via VHF channel 16 or 508–457–3211 (Sector Southeastern New England command center) to obtain permission to do so.

Dated: June 16, 2011.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Southeastern New England.

[FR Doc. 2011–17536 Filed 7–12–11; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 251

[Docket No. 2011–5]

Copyright Arbitration Royalty Panel Rules and Procedures

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; technical amendment.

SUMMARY: The Copyright Office is making an amendment to its regulations by removing Part 251 Copyright Arbitration Royalty Panel Rules of Procedure. In 2004, Congress replaced the Copyright Arbitration Royalty Panels with three Copyright Royalty Judges who operate under separate regulations.

DATES: *Effective Date:* July 13, 2011.

FOR FURTHER INFORMATION CONTACT:

Tanya M. Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On November 30, 2004 the Copyright Royalty and Distribution Reform Act of 2004 was signed into law creating the

Copyright Royalty Judges, Public Law 108–419, 118 Stat. 2341. The Act replaced the royalty panels with three Copyright Royalty Judges who promulgated separate regulations to govern their proceedings. See 37 CFR Ch. III. The Act also provided for the retention of the Copyright Arbitration Royalty Panels (“CARP”) for the purpose of concluding certain open proceedings. For this reason, the Office retained its regulations in order to complete the open proceedings and as a historical reference for those determinations that had been decided under the CARP system and had been appealed. These proceedings, however, have all been concluded and there is no longer a need for these regulations. Hence, the Office is amending its regulations to remove the section that governed the CARP proceedings.

List of Subjects in 37 CFR Part 251

Copyright Arbitration Royalty Panels (CARPs), Copyright General Provisions, Copyright Royalty Board, Copyright Royalty Judges.

Final Rule

PART 251—[REMOVED]

Accordingly, under the authority at 17 U.S.C. 702, 37 CFR Chapter II, Subchapter B is amended by removing part 251.

Dated: June 28, 2011.

Maria A. Pallante,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 2011–17657 Filed 7–12–11; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1179; FRL–9436–7]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Indiana; Michigan; Minnesota; Ohio; Wisconsin; Infrastructure SIP Requirements for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve elements of submissions by Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin regarding the

infrastructure requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 eight-hour ground level ozone national ambient air quality standards (1997 8-hour ozone NAAQS) and 1997 fine particle national ambient air quality standards (1997 PM_{2.5} NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The proposed rulemaking was published on April 28, 2011. During the comment period, which ended on May 31, 2011, EPA received three comment letters raising a number of concerns, which will be addressed in this final action.

DATES: This final rule is effective on August 12, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2007-1179. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang at (312) 886-0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18)), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, chang.andy@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What is the background for this action?
- II. What is the scope of this final rulemaking?
- III. What is our response to comments received on the notice of proposed rulemaking?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

I. What is the background for this action?

This final rulemaking addresses state submittals from each state (and appropriate state agency) in EPA Region 5: Illinois Environmental Protection Agency (Illinois EPA); Indiana Department of Environmental Management (IDEM); Michigan Department of Environmental Quality (MDEQ); Minnesota Pollution Control Agency (MPCA); Ohio Environmental Protection Agency (Ohio EPA); and Wisconsin Department of Natural Resources Bureau of Air Management (WDNR). At the time of our proposed rulemaking, each state had made submittals on the following dates: Illinois—December 12, 2007; Indiana—December 7, 2007, and supplemented on September 19, 2008, March 23, 2011, and April 7, 2011; Michigan—December 6, 2007, and supplemented on September 19, 2008 and April 6, 2011; Minnesota—November 29, 2007; Ohio—December 5, 2007, and supplemented on April 7, 2011; and, Wisconsin—December 12, 2007, and supplemented on January 24, 2011 and March 28, 2011. The submittals from each state, and the supplements thereto, may be found in the docket for this action.

Under sections 110(a)(1) and (2) of the CAA, and implementing EPA policy, the states were required to submit either revisions to their State Implementation Plans (SIPs) necessary to provide for implementation, maintenance, and enforcement of the 1997 8-hour ozone NAAQS or the 1997 PM_{2.5} NAAQS, or certifications that their existing SIPs for ozone and particulate matter already met those basic requirements. The statute requires that states make these submittals within three years after the promulgation of new or revised NAAQS. However, intervening litigation over the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS created uncertainty about how states were to proceed.¹ Accordingly, both EPA and the states were delayed in addressing these basic SIP requirements.

In a consent decree with Earth Justice, EPA agreed to make completeness findings with respect to these SIP submittals. Pursuant to this consent decree, EPA published completeness findings for all states for the 1997 8-hour ozone NAAQS on March 27, 2008, and for all states for the 1997 PM_{2.5} NAAQS on October 22, 2008.

On October 2, 2007, EPA issued a guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997

8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards," making recommendations to states concerning these SIP submittals (the 2007 Guidance). Within the 2007 Guidance, EPA gave general guidance relevant to matters such as the timing and content of the submittals.

EPA published its proposed action on the states' submittals on April 28, 2011. During the comment period on this proposal, EPA received three comment letters raising a number of concerns with respect to various issues for one or more states addressed in the proposal. EPA addresses the significant comments in this final action.

EPA received comments concerning the proposed approval of the submission from the State of Wisconsin that require further evaluation. Accordingly, today EPA is not finalizing its proposed approval of that submission for section 110(a)(2)(C) with respect to two narrow issues: (i) The requirement for consideration of oxides of nitrogen (NO_x); and (ii) the definition of "major modification" related to fuel changes for certain sources. EPA will address these issues in a later action.

II. What is the scope of this final rulemaking?

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM_{2.5} NAAQS for various states across the country. Commenters on EPA's recent proposals for some States raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submittals.² The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submittals: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"). EPA notes that there are two other

¹ See, e.g., *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001).

² See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA-R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5).

substantive issues for which EPA likewise stated that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and (ii) existing provisions for prevention of significant deterioration (PSD) programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, that "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and PM_{2.5} NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the

issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)" and that these SIPs are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as "infrastructure SIPs." This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as "nonattainment SIP" submissions required to address the nonattainment planning requirements of part D, "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for

these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.³ Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.⁴

Notwithstanding that section 110(a)(2) states that "each" SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).⁵ This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general "infrastructure SIP" for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter "interstate transport" provisions within

³ For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

⁴ For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule," 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase "contribute significantly to nonattainment").

⁵ See, e.g., *Id.*, 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.⁶ This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.⁷

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, i.e., the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements "as applicable." In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.⁸ Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the "infrastructure" elements for SIPs, which it further described as the "basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards."⁹ As further identification of these basic structural SIP requirements, "attachment A" to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended "to constitute an interpretation of" the requirements, and was merely a "brief description of the required elements."¹⁰ EPA also stated its belief that with one exception, these requirements were "relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with

assistance from EPA Regions."¹¹ For the one exception to that general assumption, however, i.e., how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submissions, and for certain elements of the submissions for the 1997 PM_{2.5} NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

⁶ EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM_{2.5} NAAQS. See, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I-X, dated August 15, 2006.

⁷ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

⁸ See, "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I-X, dated October 2, 2007 (the "2007 Guidance"). EPA issued comparable guidance for the 2006 PM_{2.5} NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)," from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I-X, dated September 25, 2009 (the "2009 Guidance").

⁹ Id., at page 2.

¹⁰ Id., at attachment A, page 1.

¹¹ Id., at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so "self explanatory," and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA’s 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a “SIP call” whenever the Agency determines that a state’s SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.¹² Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹³

¹² EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,” 74 FR 21639 (April 18, 2011).

¹³ EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,”

Significantly, EPA’s determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency’s subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director’s discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.¹⁴

III. What is our response to comments received on the notice of proposed rulemaking?

The public comment period for EPA’s proposal to approve some elements and conditionally approve other elements of certifications submitted by the Region 5 states closed on May 31, 2011. EPA received three comment letters; a synopsis of the significant individual comments as well as EPA’s response to each comment is discussed below.

Comment 1: One commenter objected to EPA’s proposed approvals of the states’ SIPs on the ground that the states are not adequately notifying the public of health risks related to the most recent ozone and PM_{2.5} NAAQS. According to the commenter, the SIPs are not consistent with section 110(a)(2)(J), Sub-element 2: Public Notification, and EPA’s approval of the submissions violates section 110(l). The commenter argued that it “is wrong for States inform the public that the air is ‘safe’ based on the 1997 ozone and PM_{2.5} NAAQS, particularly when EPA has determined that concentrations of ground-level ozone above 75 parts per billion (ppb) and concentrations of PM_{2.5} above 35 micrograms per cubic meter (µg/m³) are unsafe.” The commenter continued that “there is no reason why States should not be

informing the public of air pollution dangers based on the 75 ppb ozone NAAQS and the 35 µg/m³ PM_{2.5} NAAQS.” The commenter urged EPA to require states to inform the public of “unsafe air pollution levels based on EPA’s official understanding of current public health science.”

Response 1: EPA disagrees with the commenter’s view that the existing SIPs of these states are not sufficient for purposes of the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS, and that approval thereof is inconsistent with section 110(l). In the proposed rulemaking, EPA concluded that each of the Region 5 states “* * * has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.” As explained above, in these actions EPA is only addressing the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS, and is not taking action with respect to any other NAAQS.

EPA agrees with the commenter that these NAAQS are not as protective as needed for public health and welfare, as shown by EPA’s more recent promulgation of new NAAQS for both ground level ozone and particulate matter based on new or revised health assessments.¹⁵ Nevertheless, all of the Region 5 states’ submittals at issue in this action were intended to satisfy the infrastructure SIP requirements in relation to the 1997 8-hour ozone NAAQS and 1997 PM_{2.5} NAAQS. EPA’s action here only addresses the requirements of section 110(a)(1) and (2) in the context of these NAAQS, and not of any subsequent NAAQS. EPA will be taking separate actions on the Region 5 states’ submissions for section 110(a)(1) and (2) with respect to the revised ozone and PM_{2.5} NAAQS. In those later actions, EPA will evaluate the states’ satisfaction of applicable elements of section 110(a)(2), including section 110(a)(2)(J), based on the applicable NAAQS.

As a further point of information, EPA observes that all Region 5 states participate in the AIRNOW program, which reports air quality according to the current promulgated indices. Thus, members of the public do have access to information concerning the ambient air quality in their states, and this information is given with respect to the most recent ozone and PM_{2.5} NAAQS. EPA believes that the availability of this information serves to address the

¹⁴ 75 FR 82,536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

¹⁵ EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director’s discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director’s discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

¹⁵ The most recent revisions to the 8-hour ground level ozone NAAQS was published in the **Federal Register** on March 27, 2008 (73 FR 16436), and the most recent revisions to the 24-hour PM_{2.5} NAAQS was published in the **Federal Register** on October 17, 2006 (71 FR 61144).

commenter's concerns with respect to public information.

Finally, EPA disagrees with the commenter's view of the applicability of section 110(l) to these actions on infrastructure SIPs. EPA agrees that after the Agency promulgates a new or revised NAAQS, subsequent SIP revisions should generally be evaluated for compliance with section 110(l) in light of the existence of any such new or revised NAAQS. However, section 110(l) is more typically a concern with respect to revisions to an existing SIP in which there could be a relaxation of a SIP approved provision in a way that would interfere with attainment or maintenance of the NAAQS or any other applicable requirement of the CAA. In this action, however, EPA is merely approving a new submission that does not purport to subtract from the existing SIP as previously approved by the Agency. These submissions are intended to assure that the state's SIP meets the requirements with respect to the specific NAAQS at issue, i.e., the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.

Comment 2: One commenter objected to EPA's proposed approval of the submissions from several states on the grounds that the SIPs of each state contain impermissible provisions. The commenter asserted that the states of Wisconsin, Indiana, and Illinois have SSM exemptions in regulations within their existing SIPs that are in conflict with EPA's interpretation of the CAA. The commenters argued that such provisions are contrary to section 110, and that until such provisions are removed, the SIPs do not meet the requirements of section 110.

Response 2: EPA disagrees with the commenter's apparent conclusion that if a state's existing SIP contains any arguably illegal SSM provision, then EPA cannot approve the infrastructure SIP submission of that state. As discussed in more detail in section II of this final rulemaking, "What is the scope of this final rulemaking?" EPA does not agree that action upon an infrastructure SIP required by section 110(a)(1) and (2) requires that EPA address any existing SSM provisions.

EPA shares the commenter's concerns that certain existing SSM provisions may be contrary to the CAA and existing Agency guidance, and that such provisions can have an adverse impact on air quality control efforts in a given state. As stated in the proposal, EPA plans to address such provisions in the future, and in the meantime encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

Comment 3: The same commenter also objected to EPA's proposed approvals on the grounds that the existing SIPs of two states contain another form of impermissible provision within their regulations. The commenter asserted that the states of Wisconsin and Illinois have director's discretion provisions in their respective regulations that allow the director of their respective environmental protection agencies to allow violations of SIP approved emissions limits by sources under certain circumstances.

Response 3: EPA also disagrees with the commenter's apparent conclusion that if a state's existing SIP contains any arguably illegal director's discretion or director's variance provision, then EPA cannot approve the infrastructure SIP submission of that state. As discussed in more detail in section II of this final rulemaking, "What is the scope of this final rulemaking?" EPA does not agree that action upon an infrastructure SIP required by section 110(a)(1) and (2) requires that EPA address any existing director's discretion provisions.

EPA shares the commenter's concerns that certain existing director's discretion provisions may be contrary to the CAA and existing Agency guidance, and that such provisions can have an adverse impact on air quality control efforts in a given state. As stated in the proposal, EPA plans to take action in the future to address such provisions, and in the meantime encourages any state having a deficient director's discretion or director's variance provision to take steps to correct it as soon as possible.

Comment 4: One commenter objected to EPA's proposed approval because it did not explain why the Agency was not acting on the requirements of section 110(a)(2)(D)(i) in the context of the infrastructure SIPs for the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS. The commenter argued that EPA provided no basis for, and professed its own lack of awareness of a basis for, the exclusion of section 110(a)(2)(D)(i) from this action. The commenter implied that because EPA was not addressing section 110(a)(2)(D)(i) in this specific action, it renders the action on the other elements of section 110(a)(2) illegitimate.

Response 4: As previously explained, EPA bifurcated action on section 110(a)(2)(D)(i) from the other applicable infrastructure SIP requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS. This approach dates back to 2005 when EPA entered into a consent decree with Environmental Defense Fund which required EPA to make completeness findings with respect to

section 110(a)(2)(D)(i) by March 15, 2005, and which required EPA to make completeness findings with respect to other applicable requirements of section 110(a)(2) by December 15, 2007, for the 1997 ozone NAAQS, and by October 5, 2008, for the 1997 PM_{2.5} NAAQS. The findings notice that announced EPA's completeness determinations for the infrastructure SIP submissions for the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS clearly articulated which elements of section 110(a)(2) were relevant to those specific submissions.¹⁶ In addition, EPA issued two separate guidance documents making recommendations for SIP submissions to meet section 110(a)(2)(D)(i) and for the other applicable requirements of section 110(a)(2) for these NAAQS. As a result, states made one or more separate submissions to address the substantive requirements of section 110(a)(2)(D)(i) that are separate from, and outside the scope of, the SIP submissions that are at issue in this action.

Comment 5: One commenter argued that the air pollution enforcement program in Indiana is not sufficient, and implies that this is a basis for EPA not to approve the infrastructure SIP submission from the state. According to the commenter, press reports indicate that the State is not aggressively enforcing air pollution regulations. In support of its concerns, the commenter referred to an unspecified letter from EPA to IDEM in which EPA expressed concerns about changes to the enforcement program and funding of the enforcement program in Indiana. In addition, the commenter asserted that IDEM has an enforcement policy that requires a higher threshold for enforcement showing adverse health impacts as a result of a violation and that this threshold is inconsistent with protection of public health because of the difficulty of proving causation with respect to health impacts.

Response 5: EPA acknowledges that concerns have been raised about enforcement of air pollution programs in Indiana, including concerns raised by EPA in a June 24, 2009 letter to David Phippen, Policy Director in the Office of the Indiana Governor. However, EPA disagrees that these concerns rise to the level of demonstrating that the state's SIP is insufficient to meet the basic requirements of section 110(a)(2)(A) and (E) with respect to enforcement.

¹⁶ See, e.g., "Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS, 73 FR 16205 (March 27, 2008). EPA specifically noted that section 110(a)(2)(D)(i) was being addressed in separate SIP actions. Id., 73 FR at 16206, at footnote 1.

The commenter's primary objections with respect to enforcement in Indiana go to matters that are properly construed as questions of "enforcement discretion." In other words, EPA believes that certain decisions about how best to direct enforcement resources, what sources to investigate, what types of violations warrant more attention, etc., are largely matters of discretion that a state may determine.¹⁷ EPA agrees that such enforcement discretion, if taken to extremes, could call into question whether a state was effectively meeting its obligations under the CAA. EPA does not see evidence of that in this case. Similarly, questions of the adequacy of resources for effective enforcement are largely matters of state discretion and would not be a basis for disapproval action by EPA unless there were clear evidence that the absence of resources rose to the level that the state was not capable of fulfilling its obligations under the CAA. EPA does not see evidence of that in this case. In short, EPA does not see a basis for disapproval of the infrastructure SIP submissions by Indiana based on the questions raised by the commenter.

EPA continues to monitor IDEM's air enforcement program through monthly conference calls and reviews of enforcement data submitted by IDEM. EPA confirms that IDEM inspectors are meeting EPA's Compliance Monitoring Strategy requirements and furthermore, enforcement under IDEM's reorganized Compliance and Enforcement Branch has shown an increase in the number of enforcement actions timeliness of resolution.

EPA concludes that, in the context of acting on the infrastructure SIPs for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS, the air pollution enforcement program in Indiana is consistent with the basic requirements of section 110(a)(1) and (2) of the CAA. In the event that concerns with respect to adequate enforcement of the air pollution program in the state arise in the future, EPA could address such concerns using appropriate authorities under the CAA.

Comment 6: One commenter argued that Illinois has state law provisions that undermine enforcement of SIP requirements. The commenter asserts that the enforcement of air pollution regulations in Illinois "is undermined by a convoluted interpretation of State

law, including a lengthy appeals process and 'automatic stay' provisions that are applicable to Illinois Pollution Control Board hearings." According to the commenter, permittees who challenge their permits benefit by stays of the challenged permit provisions that can provide de facto variances from SIP requirements. Implicitly, the commenter argued that this issue would preclude EPA's approval of the infrastructure SIP submission by Illinois for the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.

Response 6: EPA disagrees that the issue raised by the commenter requires EPA to disapprove the submission by Illinois. EPA's review of the infrastructure SIP is intended to evaluate whether the state's SIP contains the basic requirements for implementation, maintenance, and enforcement of the NAAQS in question. The commenter's concerns go to a very specific issue resulting from interpretations of state law. EPA believes that this issue has already been resolved with the state.

On March 3, 2011, EPA completed a review of Illinois EPA's enforcement program in the context of the CAA. EPA is committed to working with the State to address any problems that were documented in the review. With respect to the automatic stay provisions in Illinois, the Illinois State legislature amended the Illinois Environmental Protection Act (415 ILCS 5/) to address this deficiency. The Governor of Illinois signed this legislation on June 20, 2010. This legislation eliminated the 'automatic stay' provisions noted by the commenter; therefore, EPA believes that all concerns with respect to this issue have been resolved with respect to approval of Illinois' infrastructure SIP for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS.

Comment 7: One commenter asserted that Wisconsin is not implementing its SIP sufficiently to comply with 40 CFR 51.160 and section 110(a) of the CAA. The commenter took issue with three aspects of Wisconsin's permitting program, particularly with respect to modeling. First, the commenter alleged that WDNR is effectively exempting sources from demonstrating, through modeling, that emissions from those sources will not cause NAAQS violations or prevent NAAQS maintenance. In support of this claim, the commenter claimed that " * * * DNR's 'guidance' ¹⁸ on modeling notes that sources can avoid modeling in

nonattainment areas if they obtain offsets or model below the SIL—despite no SIP provision for Wisconsin allowing such exemptions to Wis. Stat. § 285.63(1). Wisconsin DNR's 'guidance' also exempts all operating permits for sources in nonattainment areas from the clea[r] requirement to demonstrate compliance with (and non-prevention of maintenance of) NAAQS as a condition of permit approval for all operating permits for all sources (not merely those in attainment areas) in Wis. Stat. § 285.63(1)."

Second, the commenter asserted that WDNR has not been modeling compliance with PM_{2.5} for registration permits, and has supported the claim by citing Wis. Stat. § 285.63. As evidence for this claim, the commenter pointed to a recent decision by a state Administrative Law Judge concerning a failure to model compliance with the PM_{2.5} NAAQS. The commenter claimed that the State continues to fail to do so.

Third, the commenter claimed that WDNR does not model ozone impacts, i.e., ozone NAAQS compliance, in contravention of the SIP requirement to demonstrate compliance with all NAAQS as a condition of permit issuance. Moreover, the commenter further asserted that to its knowledge "DNR has never analyzed the impacts of facilities on ozone during permitting—as it is required to do pursuant to 42 U.S.C. 7410(a), 40 CFR 51.160, 51.166 and Wis. Stat. § 285.63(1). In fact, DNR's guidance states explicitly that it does not model for ozone impacts."

Response 7: EPA disagrees with the commenter's conclusions on each point. First, with respect to the claim that the state's guidance improperly "exempts" sources from modeling, EPA disagrees with the commenter's conclusions. EPA's regulations at 40 CFR part 51 section 160(a) and (b) require that states have a procedure to establish whether a source will, inter alia, interfere with attainment or maintenance of the NAAQS. The guidance cited by the commenter is not inconsistent with this requirement, and EPA's regulations do not preclude the appropriate use of offsets or SILs as a means to determine that there will not be such an impact. Therefore, the commenter's objections do not indicate that the State's infrastructure SIP is inconsistent with the applicable requirements of section 110(a)(1) and (2).

Second, the argument that the commenter made with respect to the decision of the Administrative Law Judge is a matter of concern, but does not establish that the State is failing to conduct the necessary analysis in connection with all permits. Moreover,

¹⁷ It is important to note that the state's exercise of enforcement discretion in the case of a particular violation does not affect potential enforcement by EPA or other parties. Thus, the state's policies with respect to what types of violations warrant enforcement action by the state do not necessarily affect the enforceability of the SIP itself.

¹⁸ The guidance that is being referred to can be found here: http://dnr.wi.gov/air/pdf/wdnrguidance_v71final.pdf

the decision in question relates to the minor source NSR program, and as explained in section II, minor source NSR is an issue that EPA considers outside of the scope of infrastructure SIP evaluations. Therefore, any evaluation of Wisconsin's minor source NSR program will be conducted independently of this rulemaking.

Finally, in response to the commenter's third point, the PSD regulations require an ambient impact analysis for ozone for proposed major stationary sources and major modifications to obtain a PSD permit (40 CFR 51.166 (b)(23)(i), (i)(5)(i)(f), (k), (l) and (m) and 40 CFR 52.21 (b)(23)(i), (i)(5)(i)(f), (k), (l) and (m)), but not necessarily modeling in all cases. The regulations at 40 CFR 51.166(l) state that for air quality models the SIP shall provide for procedures which specify that:

(1) All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in Appendix W of this part (Guideline on Air Quality Models).

(2) Where an air quality model specified in Appendix W of this part (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102.

These parts of 40 CFR Part 51 and 52 are the umbrella SIP components that states have either adopted by reference or the states have been approved and delegated authority to incorporate the PSD requirements of the CAA. As discussed above, these Part 51 and 52 PSD provisions refer to 40 CFR Part 51, Appendix W for the appropriate method to utilize for the ambient impact assessment. 40 CFR Part 51, Appendix W is the Guideline on Air Quality models and Section 1.0.a. states:

The guideline recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source review (NSR), including prevention of significant deterioration (PSD). {footnotes not included} Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses

performed by EPA, State and local agencies, and by industry. * * * The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.

Appendix W Section 5.2.1. includes the *Guideline* recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Specifically, Section 5.2.1.c states:

Estimating the Impact of Individual Sources. Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).

Appendix W Section 5.2.1.c provides that the state and local permitting authorities and permitting applicants should work with the appropriate EPA Regional Office on a case-by-case basis to determine an adequate method for performing an air quality analysis for assessing ozone impacts. Due to the complexity of modeling ozone and the dependency on the regional characteristics of atmospheric conditions, EPA believes this is an appropriate approach rather than specifying a method for assessing single source ozone impacts, which may not be appropriate in all circumstances. Instead, the choice of method "depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office * * *." Appendix W Section 5.2.1.c. Therefore, EPA continues to believe it is appropriate for permitting authorities to consult and work with EPA Regional Offices as described in Appendix W, including section 3.0.b and c, 3.2.2, and 3.3, to determine the appropriate approach to assess ozone impacts for each PSD required evaluation.

EPA has previously approved the State's PSD program.¹⁹ EPA observes that Wisconsin routinely consults with staff in the Region 5 Office to examine the impacts of ozone from specific sources on a case-by-case basis for permitting purposes. Moreover, EPA observes that the modeling guidance referenced by the commenter is not an approved part of Wisconsin's SIP. Thus, the commenter has not demonstrated that we should not approve this infrastructure SIP submission.

¹⁹ See, "Approval and Promulgation of Implementation Plans; Wisconsin," 64 FR 28745 (May 27, 1999).

Comment 8: One commenter objected to EPA's proposed conditional approval of the submissions of Indiana, Michigan, and Ohio, with respect to section 110(a)(2)(C) based upon a commitment of each state to update its respective SIP to eliminate the use of PM₁₀ as a surrogate for PM_{2.5} in its PSD program. The commenter argued that this use of a conditional approval is inappropriate because it would allow states to continue to use a PM₁₀ surrogacy policy that EPA has explicitly determined may not be used by states after May 16, 2011. The commenter further asserted that aside from the inappropriate use of conditional approval, any approval of SIPs that rely on the use of PM₁₀ as a surrogate for PM_{2.5} would be contrary to the CAA for a variety of legal and factual reasons.

Response 8: Based on an evaluation of the concerns raised by the commenter, EPA has concluded that a conditional approval is not appropriate in these specific facts and circumstances. Congress has explicitly authorized EPA to use conditional approvals under section 110(k)(4), provided that states make a commitment to adopt specific measures by a date certain within one year. As noted by the commenter, the courts have confirmed that conditional approvals are an available course of action under section 110(k), but only if the statutory conditions for such a conditional approval have been met.

In this instance, EPA believed that the states had made commitments to take sufficiently "specific" actions within the statutorily allotted time, by committing to make a specified SIP submission that would eliminate the use of PM₁₀ as a surrogate for PM_{2.5} by a date certain.²⁰ However, the commenter's concerns go not to whether the commitments were specific enough, but rather to whether a conditional approval is appropriate at all, in light of other EPA determinations with respect to when states must cease using the PM₁₀ surrogate policy. EPA agrees that its own determination with respect to when states must cease using the PM₁₀

²⁰ The commenter cited *Sierra Club v. EPA*, 356 F.3d 296 (D.C. Cir. 2004), for the proposition that EPA cannot use a section 110(k)(4) conditional approval to approve plans that do "nothing more than promise to do tomorrow what the Act requires today." EPA disagrees with this overbroad contention. So long as the conditional approval meets the statutory requirements of section 110(k)(4), EPA believes that it may be appropriate to give a conditional approval to a state allowing it to rectify a deficiency in a submission that would otherwise constitute a basis for a disapproval, if the state were not willing to commit to rectify the deficiency within the requisite time. To read the statute to prohibit use of section 110(k)(4) in such circumstances, as the commenters advocate, would render it a legal nullity.

surrogacy policy is relevant to whether a conditional approval is the correct course of action. Section 110(k)(4) provides that EPA “may” approve a SIP conditionally, thereby indicating that EPA has discretion to determine that a given substantive issue is or is not suitable for a conditional approval. After considering the commenter’s concerns, EPA has concluded that a conditional approval is not appropriate in these circumstances.

In order to address the commenter’s substantive concern about continued use of the PM₁₀ surrogate policy after May 16, 2011, EPA asked the states of Indiana, Michigan, and Ohio to clarify the facts with respect to their current usage of the PM₁₀ surrogate policy for PSD permitting purposes. All three states responded that they have the legal authority under their respective PSD regulations to regulate PM_{2.5} directly, rather than PM₁₀. Furthermore, the states of Indiana, Michigan, and Ohio confirmed that they have discontinued reliance on the PM₁₀ surrogate policy to satisfy the PSD requirements for PM_{2.5}. Indiana, Michigan, and Ohio transmitted letters affirming these points on June 17, 2011, June 22, 2011, and June 23, 2011, respectively.

EPA considers the letters from each state to be a supplemental submission that clarifies and updates the prior infrastructure SIP submissions. Therefore, EPA considers the facts as represented by each state in its letter to be a part of the basis for its evaluation of the infrastructure SIPs. Because each state has confirmed that it already has

the requisite legal authority to regulate PM_{2.5} directly in its PSD program, and because each state has confirmed that it is no longer using the PM₁₀ surrogate policy, EPA concludes that there is no need to use a conditional approval with respect to section 110(a)(2)(C) for each of these states. Therefore, in today’s action EPA is simply approving the submissions with respect to section 110(a)(2)(C). EPA believes that this course of action will alleviate the legitimate concerns of the commenters with respect to any continued use of the PM₁₀ surrogacy policy in these states.

IV. What action is EPA taking?

For the reasons discussed in the proposed rulemaking, as well as the responses to comments received by EPA during the public comment period, EPA is taking final action to approve elements of submissions from the EPA Region 5 states certifying that the current SIPs are sufficient to meet the applicable infrastructure elements under sections 110(a)(1) and (2) for the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS. Notably, whereas the proposed rulemaking contained conditional approvals for Indiana, Michigan, and Ohio with respect to their satisfaction of section 110(a)(2)(C), Sub-element 3: PM₁₀ surrogate policy, EPA’s final action for these three states is an approval based on the discussion in the response to Comment 8.

Based upon comments received during the rulemaking, EPA is not finalizing its proposed approval of the submission from the State of Wisconsin with respect to two narrow issues that

relate to section 110(a)(2)(C): (i) The requirement for consideration of NO_x as a precursor to ozone; and (ii) the definition of “major modification” related to fuel changes for certain sources. EPA will address these issues in a later action.

As detailed in section II of this final action, EPA is affirming that there are four substantive issues outside of the scope of this rulemaking: SSM provisions, director’s discretion provisions, NSR Reform, and minor source NSR. It should be noted, however, that our proposed rulemaking included discussion of various past EPA approvals of minor source NSR program submissions from Region 5 states in connection with section 110(a)(2)(C). After realizing the confusion engendered by EPA’s statements about certain issues that the Agency considers outside the scope of action on infrastructure SIPs, we want to clarify that EPA does not consider the minor source NSR program to be one that states must address in their infrastructure SIPs, nor one that EPA must evaluate in approving such infrastructure SIPs. Therefore, our final action maintains that EPA is neither approving nor disapproving the minor source NSR programs in the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin in the context of infrastructure SIPs. Any future evaluation of those minor source NSR programs will be conducted independently of today’s actions.

Specifically, these are EPA’s final actions, by element of section 110(a)(2):

Element	IL	IN	OH	MI	MN	WI ²¹
A: Emission limits and other control measures	A	A	A	A	A	A
B: Ambient air quality monitoring and data system	A	A	A	A	A	A
C1: Enforcement of SIP measures	A	A	A	A	A	A
C2: NO _x as a precursor to ozone in PSD regulations	*	A	A	A	*	NA
C3: PM ₁₀ surrogate policy in PSD regulations	*	A	A	A	*	A
C4: NSR reform	NA	NA	NA	NA	NA	NA
C5: GHG permitting in PSD regulations	*	A	A	A	*	A
C6: Minor source NSR regulations	NA	NA	NA	NA	NA	NA
D(i): Interstate transport	NA	NA	NA	NA	NA	NA
D(ii): Interstate and international pollution abatement	A	A	A	A	A	A
E: Adequate resources	A	A	A	A	A	A
F: Stationary source monitoring system	A	A	A	A	A	A
G: Emergency power	A	A	A	A	A	A
H: Future SIP revisions	A	A	A	A	A	A
I: Nonattainment area plan or plan revisions under part D	NA	NA	NA	NA	NA	NA
J1: Consultation with government officials	A	A	A	A	A	A
J2: Public notification	A	A	A	A	A	A
J3: PSD	**	**	**	**	**	**
J4: Visibility protection (Regional Haze)	NA	NA	NA	NA	NA	NA
K: Air quality modeling and data	A	A	A	A	A	A
L: Permitting fees	A	A	A	A	A	A

²¹ In addition to the information provided in this table for the State of Wisconsin, EPA reiterates once again that we are not finalizing any action with

respect to the definition of “major modification” related to fuel changes for certain sources in Wisconsin. EPA will address this issue, as well as

Wisconsin’s PSD provisions that include NO_x as a precursor to ozone, in a separate action.

Element	IL	IN	OH	MI	MN	WI ²¹
M: Consultation and participation by affected local entities	A	A	A	A	A	A

In the above table, the key is as follows:

A Approve.

NA No Action/Separate Rulemaking.

* Federally promulgated rules in place.

** Previously discussed in element (C).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 30, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

- 2. Section 52.745 is added to read as follows:

§ 52.745 Section 110(a)(2) Infrastructure Requirements.

(a) *Approval.* In a December 12, 2007 submittal, Illinois certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (C), (D)(ii), (E) through (H), and (J) through (M) for the 1997 8-hour ozone NAAQS. Illinois continues to implement the Federally promulgated rules for the prevention of significant deterioration as they pertain to section 110(a)(2)(C) and (J).

(b) *Approval.* In a December 12, 2007 submittal, Illinois certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (C), (D)(ii), (E) through (H), and (J) through (M) for the 1997 PM_{2.5} NAAQS. Illinois continues to implement the Federally promulgated rules for the prevention of significant deterioration as they pertain to section 110(a)(2)(C) and (J).

Subpart P—Indiana

- 3. In § 52.770, the table in paragraph (e) is amended by adding entries in alphabetical order for "Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS" and "Section 110(a)(2) Infrastructure Requirements for the 1997 PM_{2.5} NAAQS" to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * * * *			
Section 110(a)(2) infrastructure requirements for the 1997 8-Hour Ozone NAAQS.	12/7/2007, 9/19/2008, 3/23/2011, and 4/7/2011.	7/13/2011, [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) infrastructure requirements for the 1997 PM _{2.5} NAAQS.	12/7/2007, 9/19/2008, 3/23/2011, and 4/7/2011.	7/13/2011, [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
* * * * *			

Subpart X—Michigan

■ 4. In § 52.1170, the table in paragraph (e) is amended by adding entries at the end of the table for “Section 110(a)(2)

Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS” and “Section 110(a)(2) Infrastructure Requirements for the 1997 PM_{2.5} NAAQS” to read as follows:

§ 52.1170 Identification of plan.

* * * * *
(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Statewide	12/6/07, 7/19/08, and 4/6/11.	7/13/11, [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 1997 PM _{2.5} NAAQS.	Statewide	12/6/07, 7/19/08, and 4/6/11.	7/13/11, [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Subpart Y—Minnesota

■ 5. In § 52.1220, the table in paragraph (e) is amended by adding entries in alphabetical order for “Section 110(a)(2)

Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS” and “Section 110(a)(2) Infrastructure Requirements for the 1997 PM_{2.5} NAAQS” to read as follows:

§ 52.1220 Identification of plan.

* * * * *
(e) * * *

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Comments
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Statewide	11/29/07	7/13/11, [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Minnesota continues to implement the Federally promulgated rules for the prevention of significant deterioration as they pertain to section 110(a)(2)(C) and (J).
Section 110(a)(2) Infrastructure Requirements for the 1997 PM _{2.5} NAAQS.	Statewide	11/29/07	7/13/11, [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Minnesota continues to implement the Federally promulgated rules for the prevention of significant deterioration as they pertain to section 110(a)(2)(C) and (J).

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Comments
*	*	*	*	*
Subpart KK—Ohio				
■ 6. Section 52.1891 is added to read as follows:				
§ 52.1891 Section 110(a)(2) Infrastructure Requirements.				
(a) <i>Approval.</i> In a December 5, 2007 submittal, supplemented on April 7, 2011, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (C), (D)(ii), (E) through (H), and (J) through (M) for the 1997 8-hour ozone NAAQS.				
(b) <i>Approval.</i> In a December 5, 2007 submittal, supplemented on April 7, 2011, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (C), (D)(ii), (E) through (H), and (J) through (M) for the 1997 PM _{2.5} NAAQS.				
Subpart YY—Wisconsin				
■ 7. Section 52.2591 is added to read as follows:				
§ 52.2591 Section 110(a)(2) Infrastructure Requirements.				
(a) <i>Approval.</i> In a December 12, 2007 submittal, supplemented on January 24, 2011 and March 28, 2011, Wisconsin certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (C), (D)(ii), (E) through (H), and (J) through (M) for the 1997 8-hour ozone NAAQS. EPA is not finalizing its proposed approval of the submission from the State of Wisconsin with respect to two narrow issues that relate to section 110(a)(2)(C): The requirement for consideration of NO _x as a precursor to ozone; and (ii) the definition of “major modification” related to fuel changes for certain sources. EPA will address these issues in a later action.				
(b) <i>Approval.</i> In a December 12, 2007 submittal, supplemented on January 24, 2011 and March 28, 2011, Wisconsin certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (C), (D)(ii), (E) through (H), and (J) through (M) for the 1997 PM _{2.5} NAAQS. EPA is not finalizing its proposed approval of the submission from the State of Wisconsin with respect to two narrow issues that relate to section 110(a)(2)(C): The				
requirement for consideration of NO _x as a precursor to ozone; and the definition of “major modification” related to fuel changes for certain sources. EPA will address these issues in a later action.				
[FR Doc. 2011-17463 Filed 7-12-11; 8:45 am] BILLING CODE 6560-50-P				
ENVIRONMENTAL PROTECTION AGENCY				
40 CFR Part 52				
[EPA-R05-OAR-2010-0036; FRL-9430-9]				
Approval and Promulgation of Air Quality Implementation Plans; Ohio; Volatile Organic Compound Reinforced Plastic Composites Production Operations Rule				
AGENCY: Environmental Protection Agency (EPA).				
ACTION: Final rule.				
SUMMARY: EPA is approving into the Ohio State Implementation Plan (SIP) a new rule for the control of volatile organic compound (VOC) emissions from reinforced plastic composites production operations. This rule applies to any facility that has reinforced plastic composites production operations. This rule is approvable because it satisfies the requirements of the Clean Air Act (CAA). EPA proposed this rule for approval on January 27, 2011, and received three sets of comments.				
DATES: This final rule is effective on August 12, 2011.				
ADDRESSES: EPA has established a docket for this action under Docket ID EPA-R05-OAR-2010-0036. All documents in the docket are listed on the http://www.regulations.gov Web site. Although listed in the index, some information is not publicly available, <i>i.e.</i> , Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through http://www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886-6052 before visiting the Region 5 office.				
FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Air Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052.				
SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:				
I. What public comments were received on the proposed approval and what is EPA’s response?				
II. What action is EPA taking today and what is the basis of this action?				
III. Statutory and Executive Order Reviews				
I. What public comments were received on the proposed approval and what is EPA’s response?				
EPA received three comments. A discussion of each follows:				
(A) An anonymous comment was in support of EPA’s approval of Ohio’s rule.				
(B) The Aquatic Company commented that it is concerned that the maximum achievable control technology (MACT) limits in subpart WWWW of 40 CFR part 63, for Reinforced Plastic Composites Production, underestimate emissions generated by tub/shower manufacturers and notes that EPA is currently working to correct these and other issues with subpart WWWW. The Aquatic Company opposes any rule which is tied to the subpart WWWW regulations. This comment is not directly relevant to this rulemaking because it is mainly a complaint against the MACT and provides no suggested revisions to Ohio’s rule.				
(C) Premix, Inc. commented that it objects to the 25 tons VOC per year applicability cutoff for sheet mold compound (SMC) machines. Premix has successfully, and cost-effectively, controlled VOCs from its SMC machines using its Tight Wet Area Enclosures and a small Regenerative Thermal Oxidizer.				

This control system has reduced VOC emissions from its two SMC machines at its facility in North Kingsville, Ohio by more than 95 percent for a period of 18 months. Premix submits that this new VOC control system can be cost-effectively implemented on a single, stand-alone SMC machine, and that therefore EPA should not approve the 25 tons VOC per year applicability cutoff in Ohio's rule.

EPA agrees that the Premix control system represents a technically and economically feasible control system that should be considered to represent reasonably available control (RACT), which is the level of control required by VOC sources in ozone nonattainment areas. However, all of Ohio is designated as attainment of the 1997 8-hour ozone standard and therefore RACT is not required. EPA notes that if and when portions of Ohio are designated to nonattainment of a new ozone standard, it is unlikely that Ohio's reinforced plastic composites rule will be considered to satisfy RACT for SMC machines.

II. What action is EPA taking today and what is the basis of this action?

EPA is approving into Ohio's SIP new rule Ohio Administrative Code (OAC) 3745-21-25 "Control of VOC Emissions from Reinforced Plastic Composites Production Operations." This rule was submitted by the Ohio Environmental Protection Agency (Ohio EPA) to EPA on November 10, 2010, and contains enforceable requirements for VOC emissions from reinforced plastic composites production operations. This rule was adopted to establish VOC requirements for such operations to replace the requirements contained in OAC rule 3745-21-07 "Control of emissions of organic materials from stationary sources." 3745-21-07 is Ohio's general rule for the control of organic materials from stationary sources that are not controlled by a specific VOC RACT rule. 3745-21-07 has been revised by Ohio, and the revised rule (which is the subject of a separate **Federal Register** action) excludes reinforced plastic composites production operations.

In EPA's January 27, 2011 proposal (76 FR 4835), we present a detailed analysis of the State's submission. The reader is referred to that notice for additional background on the submission.

As discussed in the proposal, upon achieving compliance with this rule, the reinforced plastic composites production operations at a facility are not required to meet the requirements of 3745-21-07. This exemption from OAC

3745-21-07 is appropriate because OAC 3745-21-25 contains VOC requirements specific to reinforced plastic composites production operations, whereas OAC 3745-21-07 is a general rule that covers a number of source categories.

For facilities subject to OAC 3745-21-25, the control requirements are more stringent than the requirements for these facilities under OAC 3745-21-07. However, the applicability cutoff of OAC 3745-21-07 is 8 pounds/hour, or 40 pounds/day, as compared to a less stringent 25 tons VOC/year cutoff for the control requirements of OAC 3745-21-25 for SMC manufacturing operations. The main purpose of this rule is the control of such SMC operations because SMC machines were previously covered by OAC 3745-21-07. Because overall, considering both applicability and the control requirements for subject sources, OAC 3745-21-07 is more stringent than OAC 3745-21-25 for SMC machines, EPA must evaluate, according to section 110(l) of the CAA, whether the revision might interfere with attainment, maintenance, or any other CAA requirements.

Ohio EPA submitted an October 25, 2010 demonstration under section 110(l) of the CAA that the less stringent applicability cutoff in OAC 3745-21-25 does not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), nor interfere with any other requirement of the CAA. Ohio documented that the actual emission increase from this change in applicability cutoffs would be 7.1 tons of VOC/year, and that the worst case maximum theoretical increase in uncontrolled emissions is 159 tons of VOC/year.

Most of the SMC production in Ohio is in the Cleveland area. In December 2007 Ohio EPA promulgated rules reducing emissions of nitrogen oxides (NO_x) in the Cleveland area. These rules, in OAC Chapter 3745-110, entitled "NO_x RACT," addressed NO_x emissions from stationary sources such as boilers, combustion turbines, and stationary internal combustion engines. The rules were made applicable as an attainment strategy in the Cleveland-Akron-Lorain ozone moderate nonattainment area. On September 15, 2009, EPA redesignated the Cleveland-Akron-Lorain metropolitan area as attainment for the 1997 8-hour ozone NAAQS. At the same time, EPA approved a waiver for this area from the NO_x RACT requirements of section 182(f) of the CAA, based on the area attaining the standard. Ohio's NO_x RACT rules are, therefore, surplus and can be used to offset any increase in emissions from SMC machines in

Ohio. Ohio obtained 538 tons NO_x/year actual (and surplus) emission reductions from the Arcelor-Mittal facility as a result of the installation of low NO_x burners in its three reheat furnaces. The requirement for these low NO_x burners is permanent and enforceable because they are needed to comply with OAC 3745-110, Ohio's NO_x RACT rule. In the Cleveland-Akron-Lorain area, the ratio of NO_x emissions to VOC emissions is approximately 1.36 pounds NO_x/pound VOC. Applying this factor, the VOC offset potential for the Arcelor-Mittal facility NO_x reductions is 396 tons VOC/year. Consequently, EPA concludes that the net effect of the relaxation of the applicability criterion plus the compensation from requiring NO_x emission reductions at Arcelor-Mittal will be an environmental improvement in the Cleveland area and will not interfere with attainment, maintenance, or other CAA requirements.

In addition, two uncontrolled SMC machines are located at Continental Structural Plastics in Van Wert County, which are outside of the former Cleveland-Akron-Lorain ozone moderate nonattainment area. This rule relaxation is not contrary to the requirements of section 110(l) because the most recent three years of data (2008-2010) indicates that the nearest monitor, which is in Lima (in the Lima-Van Wert-Wapakoneta, Ohio Combined Statistical Area), has a 3-year ozone design value which is well under the 2008 8-hour ozone standard (70.0 parts per billion vs. the 75.0 parts per billion standard), such that removal of a requirement for controlling these SMC machines may be judged not to have the potential to cause violations of the standard. Furthermore, if any of its SMC machines exceeds 25 tons VOC per year, the facility is required to reduce their emissions by 95 percent.

In conclusion, OAC 3745-21-25 is approvable because all of Ohio is in attainment of the 1997 8-hour ozone standard and therefore a RACT level of control is not required and Ohio demonstrated that a relaxation of the applicability cutoff for SMC machines, from 8 pounds VOC per hour to 25 tons VOC per year, per machine, does not interfere with attainment of the National Ambient Air Quality Standards, or interfere with any other requirement of the CAA, as required by section 110(l) of the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission

that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 24, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

- 2. Section 52.1870 is amended by adding paragraph (c)(153) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(153) On November 10, 2010, the Ohio Environmental Protection Agency (Ohio EPA) submitted new rule OAC 3745-21-25 "Control of VOC Emissions from Reinforced Plastic Composites Production Operations" for approval into its state implementation plan.

(i) *Incorporation by reference.*

(A) Ohio Administrative Code Rule 3745-21-25 "Control of VOC Emissions

from Reinforced Plastic Composites Production Operations," effective November 11, 2010.

(B) November 1, 2010, "Director's Final Findings and Orders," signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

(ii) *Additional material.* (A) An October 25, 2010, letter from Robert F. Hodanbosi, Chief Division of Air Pollution Control of the Ohio Environmental Protection Agency to Susan Hedman, Regional Administrator, containing documentation of noninterference, under section 110(l) of the Clean Air Act, of the less stringent applicability cutoff for sheet mold compound machines.

[FR Doc. 2011-17471 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2009-0426-201124 FRL-9436-5]

Approval and Promulgation of Implementation Plans; Kentucky; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the December 13, 2007, submission by the Commonwealth of Kentucky, through the Kentucky Division of Air Quality (KDAQ) as demonstrating that the Commonwealth meets the state implementation plan (SIP) requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an "infrastructure" SIP. Kentucky certified that the Kentucky SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Kentucky (hereafter referred to as "infrastructure submission"). Kentucky's infrastructure submission, provided to EPA on December 13, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS. Additionally, EPA is responding to

adverse comments received on EPA's March 17, 2011, proposed approval of Kentucky's December 13, 2007, infrastructure submission.

DATES: *Effective Date:* This rule will be effective August 12, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2009-0426. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations, thus states were

required to provide submissions to address sections 110(a)(1) and (2) of the CAA for this new NAAQS. Kentucky provided its infrastructure submission for the 1997 8-hour ozone NAAQS on December 13, 2007. On March 17, 2011, EPA proposed to approve Kentucky's December 13, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS. See 76 FR 14626. A summary of the background for today's final action is provided below. See EPA's March 17, 2011, proposed rulemaking at 76 FR 14626 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below¹ and in EPA's October 2,

¹ Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final

2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards."

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.²
- 110(a)(2)(D): Interstate transport.³
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁴
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM_{2.5} NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing

rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Kentucky's SIP addresses 110(a)(2)(C).

² This rulemaking only addresses requirements for this element as they relate to attainment areas.

³ Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Kentucky consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. See *North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Kentucky's SIP revision, which was submitted to comply with CAIR. See 72 FR 56623 (October 4, 2007). In so doing, Kentucky's CAIR SIP revision addressed the interstate transport provisions in Section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has since proposed a new rule to address the interstate transport of NO_x and SO_x in the eastern United States. See 75 FR 45210 (Aug. 2, 2010) ("the Transport Rule"). However, because this rule has yet to be finalized, EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

⁴ This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," but as previously discussed is not relevant to today's final rulemaking.

certain substantive issues in the context of acting on the infrastructure SIP submissions.⁵ The Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction ("SSM") at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emission limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA. EPA notes that there are two other substantive issues for which EPA likewise stated that it would respond separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some States that might require future corrective action. EPA did not want States, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given State should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such State. Thus, for example, EPA explicitly noted that the Agency believes that

some States may have existing SIP-approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, that "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and PM_{2.5} NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a State. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that States must make a SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)" and that these SIPs are to provide for the

"implementation, maintenance, and enforcement" of such NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must meet. EPA has historically referred to these particular submissions that States must make after the promulgation of a new or revised NAAQS as "infrastructure SIPs." This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other requirements, such as "nonattainment SIP" submissions required to address the nonattainment planning requirements of part D, "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.⁶ Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.⁷

⁶ For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that States must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

⁷ For example, section 110(a)(2)(D)(i) requires EPA to be sure that each State's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other States. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., "Rule To Reduce Interstate Transport of Fine Particulate

⁵ See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket# EPA-R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

Notwithstanding that section 110(a)(2) states that “each” SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).⁸ This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general “infrastructure SIP” for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter “interstate transport” provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.⁹ This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state’s SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a State might be very different for an

entirely new NAAQS, versus a minor revision to an existing NAAQS.¹⁰

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C (*i.e.*, the PSD requirement applicable in attainment areas). Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements “as applicable.” In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.¹¹ Within this

guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the “infrastructure” elements for SIPs, which it further described as the “basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.”¹² As further identification of these basic structural SIP requirements, “attachment A” to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended “to constitute an interpretation of” the requirements, and was merely a “brief description of the required elements.”¹³ EPA also stated its belief that with one exception, these requirements were “relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.”¹⁴ For the one exception to that general assumption—how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS—EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM_{2.5} NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State’s submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State’s SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director’s discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director’s discretion issues implicate section 110(a)(2)(A),

Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule,” 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase “contribute significantly to nonattainment”).

⁸ See, *e.g.*, *id.*, 70 FR 25162, at 25163–25165 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

⁹ EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM_{2.5} NAAQS. See, “Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

¹⁰ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

¹¹ See, “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the “2007 Guidance”). EPA issued comparable guidance for the 2006 PM_{2.5} NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),” from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the “2009 Guidance”).

¹² 2007 Guidance at page 2.

¹³ *Id.*, at attachment A, page 1.

¹⁴ *Id.*, at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA’s approach to some substantive issues indicates that the statute is not so “self explanatory,” and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief a state's submission should establish that the state has the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the

statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.¹⁵ Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹⁶ Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.¹⁷

III. This Action

EPA is taking final action to approve Kentucky's infrastructure submission as demonstrating that the Commonwealth meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Section

¹⁵ EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision," 74 FR 21639 (April 18, 2011).

¹⁶ EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

¹⁷ EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an "infrastructure" SIP. Kentucky, through KDAQ, certified that the Kentucky SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Kentucky.

Kentucky's infrastructure submission, provided to EPA on December 13, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS. EPA has determined that Kentucky's December 13, 2007, infrastructure submission is consistent with section 110 of the CAA. Additionally, EPA is responding to adverse comments received on EPA's March 17, 2011, proposed approval of Kentucky's December 13, 2007, infrastructure submission. The responses to comments are found in Section IV below.

IV. EPA's Response to Comments

EPA received one set of comments on the March 17, 2011, proposed rulemaking to approve Kentucky's December 13, 2007, infrastructure submission as meeting the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Generally, the Commenter's concerns relate to whether EPA's approval of Kentucky's December 13, 2007, infrastructure submission is in compliance with section 110(l) of the CAA, and whether EPA's approval will interfere with the Commonwealth's compliance with the CAA's prevention of significant deterioration (PSD) requirements. A full set of the comments provided on behalf of the Kentucky Environmental Foundation (hereinafter referred to as "the Commenter") is provided in the docket for today's final action. A summary of the comments and EPA's response are provided below.

Comment 1: Under the header "No Clean Air Act Section 110(l) analysis," the Commenter states "Before providing the technical analysis for why finalizing this proposed rule would be contrary to the Clean Air Act, I wish to point out that it is 2011 and EPA has yet to ensure that these areas have plans to meet the 1997 National Ambient Air Quality Standard[s] (NAAQS) for ozone." The Commenter goes on to state that "EPA acknowledged that the science indicates that the 1997 NAAQS, which is effectively 85 parts per billion (ppb), does not protect people's health or welfare when in 2008, EPA set a new ozone NAAQS at 75 ppb."

Response 1: As noted in EPA's proposed rulemaking on Kentucky's December 13, 2007, infrastructure submission and in today's final rulemaking, the very action that EPA is undertaking is a determination that Kentucky has a plan to ensure compliance with the 1997 8-hour ozone NAAQS. Kentucky's submission was provided on December 13, 2007, for the 1997 8-hour ozone NAAQS, thus the Commonwealth's submission predates the release of the revision to the 8-hour ozone NAAQS on March 12, 2008, and is distinct from any plan that Kentucky would have to provide to ensure compliance of the 2008 NAAQS. This action is meant to address, and EPA is approving, the 1997 ozone infrastructure requirements under section 110 of the Act. In today's action EPA is not addressing the 110 infrastructure requirements for the 2008 ozone NAAQS as they will be addressed in a separate rulemaking.

EPA notes that the 1997 8-hour ozone standard as published in a July 18, 1997, final rulemaking notice (62 FR 38856) and effective September 18, 1997, are 0.08 parts per million (ppm), which is effectively 0.084 ppm or 84 ppb due to the rounding convention and not "effectively 85 parts per billion (ppb)" as the Commenter stated. Further, EPA agrees that the Agency has made the determination that the 1997 8-hour ozone NAAQS is not as protective as needed for public health and welfare, and as the Commenter mentioned, the Agency established a new ozone NAAQS at 75 ppb. However, the Agency is currently reconsidering the 2008 8-hour ozone NAAQS, and has not yet designated areas for any subsequent NAAQS.

Finally, while it is not clear which areas the Commenter refers to in stating "EPA has yet to ensure these areas have plans to meet" the 1997 ozone NAAQS, EPA believes this concern is addressed by the requirements under section 172, part D, Title I of the Act for states with nonattainment areas for the 1997 ozone NAAQS to submit nonattainment plans. As discussed in EPA's notice proposing approval of the Kentucky infrastructure SIP, submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA are outside the scope of this action, as such plans are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan

requirements are due pursuant to section 172.¹⁸

Comment 2: Also under the header "No Clean Air Act Section 110(l) analysis," the Commenter cites the section 110(l) CAA requirement, and states "Clean Air Act § 110(l) requires 'EPA to evaluate whether the plan as revised will achieve the pollution reductions required under the Act, and the absence of exacerbation of the existing situation does not assure this result.' *Hall v. EPA*, 273 F.3d 1146, 1152 (9th Cir. 2001)." The Commenter goes on to state that " * * * the Federal Register notices are devoid of any analysis of how these rule makings will or will not interfere with attaining, making reasonable further progress on attaining and maintaining the 75 ppb ozone NAAQS as well as the 1-hour 100 ppb nitrogen oxides NAAQS."

Response 2: EPA agrees with the Commenter's assertion that consideration of section 110(l) of the CAA is necessary for EPA's action with regard to approving the Commonwealth's submission. However, EPA disagrees with the Commenter's assertion that EPA did not consider 110(l) in terms of the March 17, 2011, proposed action. Further, EPA disagrees with the Commenter's assertion that EPA's proposed March 17, 2011, action does not comply with the requirements of section 110(l). Section 110(l) provides in part: "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter."

EPA has consistently interpreted section 110(l) as not requiring a new attainment demonstration for every SIP submission. The following actions are examples of where EPA has addressed 110(l) in previous rulemakings: 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). Kentucky's December 13, 2007, infrastructure submission does not revise or remove any existing emissions limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone NAAQS. Simply put, it does not make any substantive

revision that could result in any change in emissions. As a result, the submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of Kentucky's December 13, 2007, infrastructure submission will not interfere with attainment or maintenance of any NAAQS.

Comment 3: Under the header "No Clean Air Act Section 110(l) analysis," the Commenter states that "We are not required to guess what EPA's Clean Air Act 110(l) analysis would be. Rather, EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis." Further, the Commenter states that "EPA cannot include its analysis in its response to comments and approve the actions without providing the public with an opportunity to comment on EPA's Clean Air Act § 110(l) analysis."

Response 3: Please see Response 2 for a more detailed explanation regarding EPA's response to the Commenter's assertion that EPA's action is not in compliance with section 110(l) of the CAA. EPA does not agree with the Commenter's assertion that EPA's analysis did not consider section 110(l) and so therefore "EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis." Every action that EPA takes to approve a SIP revision is subject to section 110(l) and thus EPA's consideration of whether a state's submission "would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter" is inherent in EPA's action to approve or disapprove a submission from a state. In the "Proposed Action" section of the March 17, 2011, rulemaking, EPA notes that "EPA is proposing to approve Kentucky's infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA." Section 110(l) is a component of section 110, so EPA believes that this provides sufficient notice that EPA considered section 110(l) for the proposed action and concluded that section 110(l) was not violated.

Further, EPA does not agree with the Commenter's assertion that the Agency cannot provide additional clarification in response to a comment concerning section 110(l) and take a final approval action without "providing the public with an opportunity to comment on EPA's Clean Air Act § 110(l) analysis." Clearly such a broad proposition is

¹⁸ Currently, Kentucky does not have any nonattainment areas for the 1997 8-hour ozone NAAQS. The Cincinnati-Hamilton, Ohio-Kentucky-Indiana, Clarksville-Hopkinsville, Tennessee-Kentucky, Huntington-Ashland, West Virginia-Kentucky, and Louisville, Kentucky-Indiana areas, which were previously designated nonattainment for this NAAQS, were redesignated to attainment and are currently attaining the 1997 8-hour ozone NAAQS.

incorrect where the final rule is a logical outgrowth of the proposed rule. In fact, the proposition that is providing an analysis for the first time in response to a comment on a rulemaking per se violates the public's opportunity to comment has been rejected by the DC Circuit Court of Appeals. See *Int'l Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 632 n.51 (DC Cir. 1973).

Finally, as already mentioned, EPA's approval of Kentucky's December 13, 2007, infrastructure submission does not make any substantive revision that could result in any change in emissions, so there is no further "analysis" beyond whether the Commonwealth has adequate provisions in its SIP to address the infrastructure requirements for the 1997 8-hour ozone NAAQS. EPA's March 17, 2011, proposed rulemaking goes through each of the relevant infrastructure requirements and provides detailed information on how Kentucky's SIP addresses the relevant infrastructure requirements. Beyond making a general statement indicating that Kentucky's submission is not in compliance with section 110(l) of the CAA, the Commenter does not provide comments on EPA's detailed analysis of each infrastructure requirement to indicate that Kentucky's infrastructure submission for the 1997 8-hour ozone NAAQS is deficient in meeting these individual requirements. Therefore, the Commenter has not provided a basis to question the Agency's determination that Kentucky's December 13, 2007, infrastructure submission meets the requirements for the infrastructure submission for the 1997 8-hour ozone NAAQS, including section 110(l) of the CAA.

Comment 4: Under the header "No Clean Air Act Section 110(l) analysis," the Commenter further asserts that "EPA's analysis must conclude that this proposed action would [violate] § 110(l) if finalized." An example given by the Commenter is as follows: "For example, a 42 U.S.C. 7502(a)(2)(J) public notification program based on an 85 [parts per billion (ppb)] ozone level interferes with a public notification program that should exist for a 75 ppb ozone level. At its worst, the public notification system would be notifying people that the air is safe when in reality, based on the latest science, the air is not safe. Thus, EPA would be condoning the states providing information that can physical[ly] hurt people."

Response 4: EPA disagrees with the Commenter's statement that EPA's analysis must conclude that this proposed action would be in violation of section 110(l) if finalized. As

mentioned above, Kentucky's December 13, 2007, infrastructure submission does not revise or remove any existing emissions limit for any NAAQS, nor does it make any substantive revision that could result in any change in emissions. EPA has concluded that Kentucky's December 13, 2007, infrastructure submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of Kentucky's December 13, 2007, infrastructure submission will not interfere with attainment or maintenance of any NAAQS. See Response 2 and Response 3 above for a more detailed discussion.

EPA also disagrees with the specific example provided by the Commenter that the section 110(a)(2)(J) requirement for public notification for the 1997 8-hour ozone NAAQS based on 85 ppb interferes with a public notification program that should exist for a 75 ppb ozone level, and "EPA would be condoning the states providing information that can physical[ly] hurt people." As noted in Response 1, Kentucky's December 13, 2007, infrastructure submission was provided to address the 1997 8-hour ozone NAAQS and was submitted prior to EPA's promulgation of the 2008 8-hour ozone in March 2008. Thus, Kentucky provided sufficient information at that time to meet the requirement for the 1997 8-hour ozone NAAQS which is the subject of this action.

Finally, members of the public do get information related to the more recent NAAQS via the Air Quality Index (AQI) for ozone. When EPA promulgated the 2008 NAAQS (73 FR 16436, March 27, 2008) EPA revised the AQI for ozone to show that at the level of the 2008 ozone NAAQS the AQI is set to 100, which indicates unhealthful ozone levels. It is this revised AQI that EPA uses to both forecast ozone levels and to provide notice to the public of current air quality. The EPA AIRNOW system uses the revised AQI as its basis for ozone. In addition, when Kentucky forecasts ozone and provides real-time ozone information to the public, either through the AIRNOW system or through its own Internet based system, the Commonwealth uses the revised ozone AQI keyed to the 2008 revised ozone NAAQS. EPA believes this should address the Commenter's legitimate assertion.

Comment 5: Under the header "No Clean Air Act Section 110(l) analysis," the Commenter asserts that "if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes, this interferes with the requirement that PSD programs require sources to demonstrate that they will

not cause or contribute to a violation of a NAAQS because this requirement includes the current 75 ppb ozone NAAQS."

Response 5: EPA believes that this comment gives no basis for concluding that approval of the Kentucky infrastructure SIP violates the requirements of section 110(l). EPA assumes that the comment refers to the requirement that owners and operators of sources subject to PSD demonstrate that the allowable emissions from the proposed source or emissions increases from a proposed modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to a violation of any NAAQS. 40 CFR 51.166(k)(1).

EPA further assumes that the Commenter's statement "if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes" refers to a hypothetical SIP-approved PSD program that only requires owners and operators of sources subject to PSD to make the demonstration discussed above for the 1997 ozone NAAQS, and not for the 2008 ozone NAAQS. However, the Commenter gives no indication that Kentucky's SIP-approved PSD program suffers from this alleged defect. EPA has examined the relevant provision in Kentucky's SIP, Regulation 401 KAR 51:017—*Prevention of significant deterioration of air quality—Section 1, Definitions*, and has determined that the language is nearly identical to that in 51.166(k)(1), and thus satisfies the requirements of this Federal provision.

Furthermore, as discussed in detail above, the infrastructure SIP makes no substantive change to any provision of Kentucky's SIP-approved PSD program, and therefore does not violate the requirements of section 110(l). Had Kentucky submitted a SIP revision that substantively modified its PSD program to limit the required demonstration to just the 1997 ozone NAAQS, then the comment might have been relevant to a 110(l) analysis of that hypothetical SIP revision. However, in this case, the comment gives no basis for EPA to conclude that the Kentucky infrastructure SIP would interfere with any applicable requirement of the Act.

EPA concludes that approval of Kentucky's December 13, 2007, infrastructure submission will not make the status quo air quality worse and is in fact consistent with the development of an overall plan capable of meeting the Act's requirements. Accordingly, when applying section 110(l) to this submission, EPA finds that approval of Kentucky's December 13, 2007, infrastructure submission is consistent

with section 110 (including section 110(l)) of the CAA.

Comment 6: The Commenter provided comments opposing the proposed approval of the infrastructure submission because it did not identify a specific model to be used to demonstrate that a PSD source will not cause or contribute to a violation of the ozone NAAQS. Specifically, the commenter stated: “[t]he SIP submittals do not comply with Clean Air Act 110(a)(2)(J), (K), and (D)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source of modification will not cause or contribute to a violation [or] the ozone NAAQS.”

The Commenter asserted that because EPA does not require the use of a specific model, states use no modeling or use deficient modeling to evaluate these impacts. Specifically, the commenter alleged: “[m]any states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling (e.g., Kentucky using modeling from Georgia for the J.K. Smith proposed facility) is allowed.”

To support the argument that EPA should designate a particular model and require states to use it, the Commenter attached and incorporated by reference a prior petition for rulemaking requesting that EPA designate such a model.¹⁹ The petition in question was submitted by Robert Ukeiley on behalf of the Sierra Club on July 28, 2010, requesting EPA to designate air quality models to use for PSD permit applications with regard to ozone and PM_{2.5}. As supporting documentation for that petition for rulemaking, the Commenter also resubmitted 15 attachments in the comment on EPA's proposed approval of the infrastructure submission. These attachments were as follows:

1. Exhibit 1: Comments from Camille Sears on the Ninth Conference on Air Quality Modeling (Docket ID: EPA-HQ-OAR-2008-0604) (November 10, 2008);

2. Exhibit 2: “Response to Petitions for Review, Supplemental Briefs, and Amicus Brief” regarding the Desert Rock Energy Company, LLC from Ann Lyons, EPA Region 9—Office of Regional Counsel and Brian L. Doster/Elliot Zenick, EPA Headquarters—Office of General Counsel (January 8, 2009);

3. Exhibit 3: Report, The Kentucky Natural Resources and Environmental Protection Cabinet, A Cumulative Assessment of the Environmental Impacts Caused by Kentucky Electric Generating Units, (December 17, 2001);

4. Exhibit 4: Letter from Richard A. Wayland, Director of the Air Quality Assessment Division, EPA Office Air Quality and Planning Standards to Robert Ukeiley regarding Mr. Ukeiley's Freedom of Information Act (FOIA) request on behalf of the Sierra Club for documents related to EPA development of a modeling protocol for PM_{2.5} (October 1, 2008);

5. Exhibit 5: Expert Report of Lyle R. Chinkin and Neil J. M. Wheeler, Analysis of Air Quality Impacts, prepared for Civil Action No. IP99-1693 C-M/S *United States v. Cinergy Corp.*, (August 28, 2008);

6. Exhibit 6: Illinois Environmental Protection Agency, Bureau of Air, Assessing the impact on the St. Louis Ozone Attainment Demonstration from the proposed electrical generating units in Illinois” (September 25, 2003);

7. Exhibit 7: Memorandum from Stephen D. Page, Director, EPA Office Air Quality and Planning Standards entitled, “Modeling Procedures for Demonstrating Compliance with the PM_{2.5} NAAQS” (March 23, 2010);

8. Exhibit 8: E-mail from Scott B. (Title and Affiliation not provided), to Donna Lucchese, (Title and Affiliation not provided), entitled, “Ozone impact of point source” (Date described as “Early 2000”);

9. Exhibit 9: E-mail from Mary Portanova, EPA, Region 5, to Noreen Weimer, EPA, Region 5, entitled “FOIA—Robert Ukeiley—RIN-02114-09” (October 20, 2009, 10:05 CST);

10. Exhibit 10: Synopsis from PSD Modeling Workgroup—EPA/State/Local Workshop, New Orleans (May 17, 2005);

11. Exhibit 11: Letter from Carl E. Edlund, P.E., Director, EPA, Region 6 Multimedia Planning and Permitting Division to Richard Hyde, P.E. Deputy Director of the Office of Permitting and Registration, Texas Commission on Environmental Quality regarding “White Stallion Energy Center, PSD Permit Nos. PSD-TX-1160, PAL 26, and HAP 28” (February 10, 2010);

12. Exhibit 12: Memorandum from John S. Seitz, Director, EPA Office of Air Quality Planning & Standards entitled, “Interim Implementation of New Source Review Requirements for PM_{2.5}” (October 23, 1997);

13. Exhibit 13: Presentation by Erik Snyder and Bret Anderson (Titles and Affiliations not provided), to R/S/L Workshop, Single Source Ozone/PM_{2.5}

Impacts in Regional Scale Modeling & Alternate Methods, (May 18, 2005);

14. Exhibit 14: Letter from Richard D. Scheffe, PhD, Senior Science Advisor, EPA, Office of Air Quality Planning & Standards to Abigail Dillen in response to an inquiry regarding the applicability of the Scheffe Point Source Screening Tables (July 28, 2000);

15. Exhibit 15: Presentation by Gail Tonnesen, Zion Wang, Mohammad Omary, Chao-Jung Chien (University of California, Riverside); Zac Adelman (University of North Carolina); Ralph Morris *et al.* (ENVIRON Corporation Int., Novato, CA) to the Ozone MPE, TAF Meeting, Review of Ozone Performance in WRAP Modeling and Relevance to Future Regional Ozone Planning, (July 30, 2008).

Finally, the Commenter then stated that “EPA has issued guidance suggesting [that] PSD sources should use the ozone limiting method for NO_x modeling.” The Commenter referred to EPA's March 2011 NO_x modeling guidance to support this position.²⁰ The Commenter then asserts that this “ozone modeling” helps sources demonstrate compliance and that sources should also do ozone modeling that may inhibit a source's permission to pollute. The Commenter argued that EPA's guidance supports the view that EPA must require states to require a specific model in their SIPs to demonstrate that proposed PSD sources do not cause or contribute to a violation of the ozone NAAQS.”

Response 6: EPA disagrees with the Commenter's views concerning modeling in the context of acting upon the infrastructure submission. The Commenter raised four primary interrelated arguments: (1) The state's infrastructure SIP must specify a required model; (2) the failure to specify a model leads to inadequate analysis; (3) the attached petition for rulemaking explains why EPA should require states to specify a model; and (4) a recent guidance document concerning modeling for NO_x sources recommends using ozone limit methods for NO_x sources and EPA could issue comparable guidance for modeling ozone from a single source.

At the outset, EPA notes that although the Commenter sought to incorporate by reference the prior petition for rulemaking requesting EPA to designate a particular model for use by states for this purpose, the Agency is not required

¹⁹ The Commenter attached the July 28, 2010, “Petition for Rulemaking To Designate Air Quality Models To Use for PSD Permit Applications With Regard to Ozone and PM_{2.5},” from Robert Ukeiley on behalf of the Sierra Club.

²⁰ The Commenter attached an EPA memorandum dated March 1, 2011: “Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO₂ National Ambient Air Quality Standard,” from Tyler Fox, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards.

to respond to that petition in the context of acting upon the infrastructure submission. In reviewing the infrastructure submission, EPA is evaluating the state's submission in light of current statutory and regulatory requirements, not in light of potential future requirements that EPA has been requested to establish in a petition. Moreover, the petition arose in a different context, requests different relief, and raises other issues unrelated to those concerning ozone modeling raised by the Commenter in this action. EPA believes that the appropriate place to respond to the issues raised in the petition is in a petition response. Accordingly, EPA is not responding to the July 28, 2010 petition in this action. The issues raised in that petition are under separate consideration.

EPA believes that the comment concerning the approvability of the infrastructure submission based upon whether the state's SIP specifies the use of a particular model are germane to this action, but EPA disagrees with the Commenter's conclusions. The Commenter stated that the SIP submittals "do not comply with Clean Air Act 110(a)(2)(J), (K), and (D)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source [or] modification will not cause or contribute to a violation of the ozone NAAQS." EPA's PSD permitting regulations are found at 40 CFR 51.166 and 52.21 and PSD requirements for SIPs are found in 40 CFR 51.166. Similar PSD requirements for SIPs which have been disapproved with respect to PSD and for SIPs incorporating EPA's regulations by reference are found in 40 CFR 52.21. The PSD regulations require an ambient impact analysis for ozone for proposed major stationary sources and major modifications to obtain a PSD permit (40 CFR 51.166 (b)(23)(i), (i)(5)(i)(f),²¹ (k), (l) and (m) and 40 CFR 52.21 (b)(23)(i), (i)(5)(i)(f),²² (k), (l) and (m)). The regulations at 40 CFR 51.166(l) state that for air quality models the SIP shall provide for procedures which specify that:

(1) All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in Appendix W of this part (Guideline on Air Quality Models).

²¹ Citation includes a footnote: "No de minimis air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data."

²² *Id.*

(2) Where an air quality model specified in Appendix W of this part (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102.

These parts of 40 CFR part 51 and 52 are the umbrella SIP components that states have either adopted by reference or the states have been approved and delegated authority to incorporate the PSD requirements of the CAA, including portion 110(a)(2)(J), (K), and (D)(i)(II) as raised by the Commenter. As discussed above, these CFR part 51 and 52 PSD provisions refer to 40 CFR part 51, Appendix W for the appropriate model to utilize for the ambient impact assessment. 40 CFR part 51, Appendix W is the Guideline on Air Quality Models and Section 1.0.a. states

The *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source review (NSR), including prevention of significant deterioration (PSD). [footnotes not included] Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies, and by industry * * * The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.

Appendix W Section 5.2.1. includes the *Guideline* recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Specifically, Section 5.2.1.c. states: "Estimating the Impact of Individual Sources. Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2)."

Appendix W Section 5.2.1.c provides that the model users (state and local permitting authorities and permitting applicants) should work with the appropriate EPA Regional Office on a case-by-case basis to determine an adequate method for performing an air quality analysis for assessing ozone impacts. Due to the complexity of assessing ozone and the dependency on the regional characteristics of atmospheric

conditions, EPA believes this is an appropriate approach rather than specifying one particular preferred model nationwide, which may not be appropriate in all circumstances. Instead, the choice of method "depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office * * *"

Appendix W Section 5.2.1.c. Therefore, EPA continues to believe it is appropriate for permitting authorities to consult and work with EPA Regional Offices as described in Appendix W, including section 3.0.b and c, 3.2.2, and 3.3, to determine the appropriate approach to assess ozone impacts for each PSD required evaluation.^{23, 24, 25, 26}

²³ 40 CFR part 51 Appendix W, Section 3.0.b. states: "In this guidance, when approval is required for a particular modeling technique or analytical procedure, we often refer to the 'appropriate reviewing authority.' In some EPA regions, authority for NSR and PSD permitting and related activities have been delegated to State and even local agencies. In these cases, such agencies are 'representatives' of the respective regions. Even in these circumstances, the Regional Office retains authority in decisions and approvals. Therefore, as discussed above and depending on the circumstances, the appropriate reviewing authority may be the Regional Office, Federal Land Manager(s), State agency(ies), or perhaps local agency(ies). In cases where review and approval comes solely from the Regional Office (sometimes stated as 'Regional Administrator'), this will be stipulated. If there is any question as to the appropriate reviewing authority, you should contact the Regional modeling contact (<http://www.epa.gov/scram001/tt28.htm#regionalmodelingcontacts>) in the appropriate EPA Regional Office, whose jurisdiction generally includes the physical location of the source in question and its expected impacts."

²⁴ 40 CFR part 51 Appendix W, Section 3.0.c. states: "In all regulatory analyses, especially if other-than-preferred models are selected for use, early discussions among Regional Office staff, State and local control agencies, industry representatives, and where appropriate, the Federal Land Manager, are invaluable and encouraged. Agreement on the data base(s) to be used, modeling techniques to be applied and the overall technical approach, prior to the actual analyses, helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The use of an air quality analysis checklist, such as is posted on EPA's Internet SCRAM Web site (subsection 2.3), and the preparation of a written protocol help to keep misunderstandings at a minimum."

²⁵ 40 CFR part 51 Appendix W, Section 3.2.2.a. states: "Determination of acceptability of a model is a Regional Office responsibility. Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the recommendations of this subsection. This finding will normally result from a determination that (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or analytical procedure is available and applicable."

²⁶ 40 CFR part 51 Appendix W Section 3.3.a. states: "The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness and consistency in modeling decisions is fostered among the various Regional Offices and the States. To satisfy that need, EPA

Although EPA has not selected one particular preferred model in Appendix A of Appendix W (Summaries of Preferred Air Quality Models) for conducting ozone impact analyses for individual sources, state/local permitting authorities must comply with the appropriate PSD FIP or SIP requirements with respect to ozone.

The current SIP meets the requirements of 40 CFR 51.166(l)(1). Specifically, the Kentucky SIP states at Regulation 401 KAR 51:017 Section (11). *Air Quality Models*,

(1) Estimates of ambient concentrations shall be based on the applicable air quality models, databases, and other requirements specified in 40 CFR part 51, Appendix W, "Guideline on Air Quality Models" Appendix A. (2) If an air quality model specified in 40 CFR part 51, Appendix W, is inappropriate, the model may be modified or another model substituted.

This statement in the federally approved Kentucky SIP is a direct reference to EPA's Guideline on "Air Quality Models"; 40 CFR part 51, Appendix W. The commitment in Kentucky's SIP to implement and adopt air quality models utilizing 40 CFR part 51, Appendix W as a basis is appropriate and consistent with Federal regulations.

Kentucky requires that PSD permit applications contain an analysis of ozone impacts from the proposed project. As recommended by Appendix W, the methods used for the ozone impacts analysis for individual PSD permit actions are determined on a case-by-case basis. Kentucky consults with EPA Region 4 on a case-by-case basis for evaluating the adequacy of the ozone impact analysis. When appropriate, EPA Region 4 provides input/comments on the analysis. As stated in Section 5.2.1.c. of Appendix W, the "[c]hoice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions." Therefore, based on an evaluation of the source, its emissions and background ozone concentrations, an ozone impact analysis other than modeling may be required. While in other cases a complex photochemical grid type

modeling analysis, as discussed below, may be warranted. As noted, the appropriate methods are determined in consultation with Region 4 on a case-by-case basis.

As a second point, the Commenter asserted that states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling is allowed.

EPA agrees that States should not be using inappropriate analytical tools in this context. For example, the Commenter's Exhibit 14 does discuss the inappropriateness of using a screening technique referred to as the "Scheffe Tables." The Commenter is correct that the use of "Scheffe Tables" and other particular screening techniques, which involve ratios of nitrogen oxides (NO_x) to volatile organic compounds (VOC) that do not consider the impact of biogenic emissions, or that use of other outdated or irrelevant modeling is inappropriate to evaluate a single source's ozone impacts on an air quality control region. More scientifically appropriate screening and refined tools are available and should be considered for use. Therefore, EPA continues to believe States should consult and work with EPA Regional Offices as described in Appendix W on a case-by-case basis to determine the appropriate method for estimating the impacts of these ozone precursors from individual sources.

For ozone, a proposed emission source's impacts are dependent upon local meteorology and pollution levels in the surrounding atmosphere. Ozone is formed from chemical reactions in the atmosphere. The impact a new or modified source can have on ozone levels is dependent, in part, upon the existing atmospheric pollutants loading already in the region with which emissions from the new or modified source can react. In addition, meteorological parameters such as wind speed, temperature, wind direction, solar radiation influx, and atmospheric stability are also important factors. The more sophisticated analyses consider meteorology and interactions with emissions from surrounding sources. EPA has not identified an established modeling system that would fit all situations and take into account all of the additional local information about sources and meteorological conditions. The Commenter submitted a number of exhibits (including Exhibits 10, 11, and 13) in which EPA has previously indicated a preference for using a photochemical grid model when appropriate modeling databases exist

and when it is acceptable to use the photochemical grid modeling to assess a specific source.

Commenter's Exhibit 13 includes a list of issues to evaluate which aid in considering if the existing photochemical grid modeling databases are acceptable and discusses the need for permitting authorities to consult with the EPA Regional Office in determining if photochemical grid modeling would be appropriate for conducting an ozone impacts analysis. In these documents EPA has indicated that photochemical grid modeling (*e.g.*, CAMx or CMAQ) is generally the most sophisticated type of modeling analysis for evaluating ozone impacts, and it is usually conducted by adding a source into an existing modeling system to determine the change in impact from the source. The analysis is done by comparing the photochemical grid modeling results which include the new or modified source under evaluation with the results from the original modeling analysis that does not contain the source. Photochemical grid modeling is often an excellent modeling exercises for evaluating a single source's impacts on an air quality control region when such models are available and appropriate to utilize because they take into account the important parameters and the models have been used in regional modeling for attainment SIPs.

The use of reactive plume models, however, may also be appropriate under certain circumstances. EPA has approved the use of plume models in some instances, but these models are not always appropriate because of the difficulty in obtaining the background information to make an appropriate assessment of the photochemistry and meteorology impacts.

EPA has not selected a specific "preferred" model for conducting an ozone impact analysis. Model selection normally depends upon the details about the modeling systems available and if they are appropriate for assessing the impacts from a proposed new source or modification. Considering that a photochemical modeling system with inputs, including meteorological and emissions data, that would also have to be evaluated for model performance, could potentially be costly and time consuming to develop, EPA has taken a case-by-case evaluation approach. Such photochemical modeling databases are typically developed so that impacts of regulatory actions across multiple sources can be evaluated, and therefore the time and financial costs can be absorbed by the regulatory body. It is these types of databases that have the potential to be used to assess single

established the Model Clearinghouse and also holds periodic workshops with headquarters, Regional Office, State, and local agency modeling representatives. 3.3.b. states: "The Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the Regional Office may request assistance from the Model Clearinghouse after an initial evaluation and decision has been reached concerning the application of a model, analytical technique or data base in a particular regulatory action." (footnote omitted).

source ozone impacts after they have been developed as part of a regional modeling demonstration to support a SIP. From a cost and time requirement standpoint, EPA would generally not expect a single source to develop an entire photochemical modeling system just to evaluate its individual impacts on an air quality region, as long as other methods of analyzing ozone impacts are available and acceptable to EPA.

When an existing photochemical modeling system is deemed appropriate, it is an excellent tool to evaluate the ozone impact that a single source's emissions can have on an air quality region in the context of PSD modeling and should be evaluated for potential use. More often now than 10 or 15 years ago, a photochemical modeling system may be available that covers the geographic area of concern. EPA notes that even where photochemical modeling is readily available it should be evaluated as part of the development of a modeling protocol, in consultation with the Regional Office to determine its appropriateness for conducting an impact analysis for a particular proposed source or modification.²⁷ Factors to consider when evaluating the appropriateness of a particular photochemical modeling system include, but are not limited to, meteorology, year of emissions projections, model performance issues in the area of concern or in areas that might impact projections in the area of concern. Therefore, even where photochemical modeling systems exist, there may be circumstances where their use of such modeling is inappropriate for estimating the ozone impacts of a proposed source or modification. Because of these scientific issues and the need for appropriate case-by-case technical considerations, EPA has not designated a single "Preferred Model" for conducting single source impacts on analyses for ozone in Appendix A of Appendix W.

In summary, the Commenter states that many states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling is allowed. For the reasons described in this response to comment, we do not believe that one modeling system is presently appropriate to designate for all situations, yet that does not relieve proposed sources and modifications from the obligation of making the required demonstration under the applicable PSD rules. The Kentucky SIP

contains a direct reference for use of the procedures specified in EPA's "Guideline on Air Quality Models" (40 CFR part 51 Appendix W) for estimating ambient concentrations of criteria pollutants, including ozone (Regulation 401 KAR 51:017 Section 11, *Air Quality Models*). As such, Kentucky requires that PSD permit applications contain an analysis of ozone impacts from the proposed project. As recommended by Appendix W, the methods used for the ozone impacts analysis are determined on a case-by-case basis. Kentucky consults with EPA Region 4 on a case-by-case basis for evaluating the adequacy of the ozone impact analysis. When appropriate, EPA Region 4 provides input/comments on the analysis. Because EPA has not designated one particular model as being appropriate in all situations for evaluating single source ozone impacts, EPA Region 4 concurs with Kentucky's approach.

In conclusion, for the reasons stated above it is difficult to identify and implement a standardized national model for ozone. EPA has had a standard approach in its PSD SIP and FIP rules of not mandating the use of a particular model for all circumstances, instead treating the choice of a particular method for analyzing ozone impacts as circumstance-dependent. EPA then determines whether the State's implementation plan revision submittal meets the PSD SIP requirements. For purposes of review for this infrastructure SIP, the Commonwealth has an EPA-approved PSD SIP that meets the EPA PSD SIP requirements.

Finally, the Commenter argued that EPA's March 2011 guidance concerning modeling for the 1-hour nitrogen dioxide (NO₂) NAAQS demonstrates that similar single source modeling could be conducted for sources for purposes of the ozone NAAQS. Specifically, the commenter argued that the model used for other criteria pollutants (AERMOD), incorporates ozone chemistry for modeling NO₂ and therefore is modeling ozone chemistry for a single source. The Commenter stated that this guidance suggested that PSD sources should use the ozone limiting method for NO_x modeling.²⁸ Further, the Commenter noted that this technique "is modeling of ozone chemistry for a single source" and

therefore that this modeling with ozone chemistry allows a source to be permitted. The commenter concludes with the assertion that EPA must require the SIPs to include a model to use to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS.

EPA's recent March 2011 guidance for the NO₂ NAAQS does discuss using two different techniques to estimate the amount of conversion of NO_x emissions to NO₂ ambient NO₂ concentrations as part of the NO₂ modeling guidance. NO_x emissions are composed of NO and NO₂ molecules. These two techniques, which have been available for years, are the Ozone Limiting Method (OLM), which was mentioned by the Commenter, and the Plume Volume Molar-Ratio-Method (PVMRM). Both of these techniques are designed and formulated based on the principle of assuming available atmospheric ozone mixes with NO/NO₂ emissions from sources. This "mixing" results in ozone molecules reacting with the NO molecules to form NO₂ and O₂. This is a simple one-direction chemical reaction that is used to determine how much NO is converted to NO₂ for modeling of the NO₂ standard. Thus, these techniques do not predict ozone concentrations, rather they take ambient ozone data as model inputs to determine the calculation of NO conversion to NO₂. These techniques are not designed to calculate the amount of ozone that might be generated as the NO_x emissions traverses downwind of the source and potentially reacts with other pollutants in the atmosphere. Rather, these two techniques rely on a one-way calculation based on an ozone molecule (O₃) reacting with an NO molecule to generate an NO₂ molecule and an O₂ molecule.^{29, 30}

As previously mentioned, these two techniques do not attempt to estimate the amount of ozone that might be generated, and the models in which these techniques are applied are not designed or formulated to even account for the potential generation of ozone from emissions of NO/NO₂. Ozone chemistry has many cycles of destruction and generation and is dependent upon a large number of variables, including VOC concentrations and the specific types of VOC molecules present, other atmospheric pollutant concentrations, meteorological conditions, and solar radiation levels as

²⁷ 40 CFR part 51 Appendix W, Sections 3.0, 3.2., 3.3, 5.2.1.c and commenter Exhibit 13.

²⁸ The Commenter attached EPA memorandum dated March 1, 2011: "Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO₂ National Ambient Air Quality Standard," from Tyler Fox, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards.

²⁹ "AERMOD: Model Formulation Document," http://www.epa.gov/scram001/7thconf/aermod/aermod_mfd_addm_rev.pdf.

³⁰ Hanrahan, P.L., 1999a. "The plume volume molar ratio method for determining NO₂/NO_x ratios in modeling. Part I: Methodology," J. Air & Waste Manage. Assoc., 49, 1324-1331.

already discussed in this response. Since OLM and PVMRM do not include any of these scientific principles and do not account for any chemical mechanisms that would generate ozone, these techniques cannot be used for determining potential changes in ozone levels from a proposed source or modification.

In summary, the Commenter asserts that the OLM technique models of ozone chemistry for a single source and that this modeling helps a source demonstrate compliance with the NO₂ standard. The Commenter is concerned that EPA has not designated a single specific OLM technique is not also used to determine ozone impacts and believes that EPA should rectify this concern. To do so the Commenter concludes that EPA must require the SIPs to include a model to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS. As previously discussed, EPA disagrees and reiterates that the OLM (and PVMRM) are simple chemistry techniques that are not formulated to be capable to determine potential ozone impacts from a proposed source or modification.

For the reasons discussed above, EPA does not believe that the comments provide a basis for not approving the infrastructure submission. In short, EPA has not modified the Guidelines in Appendix W for ozone impacts analysis for a single source (Appendix W part 5.2.1.c.) to require use of a specific model as the Commenter requests. EPA finds that the State has the appropriate regulations to operate the PSD program consistent with Federal requirements. Furthermore, we disagree that states are required to designate a specific model in the SIP, because App. W states that state and local agencies should consult with EPA on a case-by-case basis to determine what analysis to require.

V. Final Action

As described above, KDAQ has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Kentucky. EPA is taking final action to approve Kentucky's December 13, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 30, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

- 2. Section 52.920(e), is amended by adding a new entry "110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards" at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	Commonwealth of Kentucky.	12/13/2007	7/13/2011 [Insert citation of publication].	For the 1997 8-hour ozone NAAQS.

[FR Doc. 2011-17468 Filed 7-12-11; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2010-0720-201123 FRL-9436-3]

Approval and Promulgation of Implementation Plans; Alabama; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the December 10, 2007, submission by the State of Alabama, through the Alabama Department of Environmental Management (ADEM) as demonstrating that the State meets the state implementation plan (SIP) requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. Alabama certified that the Alabama SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Alabama (hereafter referred to as “infrastructure submission”). Alabama’s infrastructure submission, provided to EPA on December 10, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS. Additionally, EPA is responding to adverse comments received on EPA’s March 17, 2011, proposed approval of Alabama’s December 10, 2007, infrastructure submission.

DATES: *Effective Date:* This rule will be effective August 12, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0720. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

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- III. This Action
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- V. Final Action
- VI. Statutory and Executive Order Reviews

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including

emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations, thus states were required to provide submissions to address sections 110(a)(1) and (2) of the CAA for this new NAAQS. Alabama provided its infrastructure submission for the 1997 8-hour ozone NAAQS on December 10, 2007. On March 17, 2011, EPA proposed to approve Alabama’s December 10, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS. *See* 76 FR 14611. A summary of the background for today’s final action is provided below. *See* EPA’s March 17, 2011, proposed rulemaking at 76 FR 14611 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and

emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below ¹ and in EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards."

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.²
- 110(a)(2)(D): Interstate transport.³
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁴
- 110(a)(2)(J): Consultation with government officials; public

¹ Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Alabama's SIP addresses 110(a)(2)(C).

² This rulemaking only addresses requirements for this element as they relate to attainment areas.

³ Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Alabama consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Alabama's SIP revision, which was submitted to comply with CAIR. See 72 FR 55659 (October 1, 2007). In so doing, Alabama's CAIR SIP revision addressed the interstate transport provisions in Section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has since proposed a new rule to address the interstate transport of NO_x and SO_x in the eastern United States. See 75 FR 45210 (Aug. 2, 2010) ("the Transport Rule"). However, because this rule has yet to be finalized, EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

⁴ This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," but as previously discussed is not relevant to today's final rulemaking.

notification; and PSD and visibility protection.

- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM_{2.5} NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.⁵ The Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction ("SSM") at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emission limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA. EPA notes that there are two other substantive issues for which EPA likewise stated that it would respond separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained.

⁵ See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA-R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP-approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, that "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and PM_{2.5} NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such

submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)" and that these SIPs are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as "infrastructure SIPs." This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other requirements, such as "nonattainment SIP" submissions required to address the nonattainment planning requirements of part D, "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.⁶ Some of the elements of

section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.⁷

Notwithstanding that section 110(a)(2) states that "each" SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).⁸ This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general "infrastructure SIP" for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter "interstate transport" provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.⁹ This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive

CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

⁷ For example, section 110(a)(2)(D)(i) requires EPA to ensure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See, e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule," 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase "contribute significantly to nonattainment").

⁸ *See, e.g., id.*, 70 FR 25162, at 25163–25165 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

⁹ EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM_{2.5} NAAQS. *See*, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.¹⁰

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C (*i.e.*, the PSD requirement applicable in attainment areas). Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements "as applicable." In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

¹⁰ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

⁶ For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.¹¹ Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the “infrastructure” elements for SIPs, which it further described as the “basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.”¹² As further identification of these basic structural SIP requirements, “attachment A” to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended “to constitute an interpretation of” the requirements, and was merely a “brief description of the required elements.”¹³ EPA also stated its belief that with one exception, these requirements were “relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.”¹⁴ For the one exception to that general assumption—how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS—EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM_{2.5} NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to

refine the scope of a State’s submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State’s SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director’s discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director’s discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA’s 2007 Guidance merely indicated its belief a state’s submission should establish that the state has the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA’s proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is

for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA’s 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a “SIP call” whenever the Agency determines that a state’s SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.¹⁵ Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹⁶ Significantly, EPA’s determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency’s subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director’s discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory

¹¹ See, “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the “2007 Guidance”). EPA issued comparable guidance for the 2006 PM_{2.5} NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),” from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the “2009 Guidance”).

¹² 2007 Guidance at page 2.

¹³ *Id.*, at attachment A, page 1.

¹⁴ *Id.*, at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA’s approach to some substantive issues indicates that the statute is not so “self explanatory,” and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

¹⁵ EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,” 74 FR 21639 (April 18, 2011).

¹⁶ EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,” 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

bases that the Agency cites in the course of addressing the issue in a subsequent action.¹⁷

III. This Action

EPA is taking final action to approve Alabama's infrastructure submission as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an "infrastructure" SIP. Alabama, through ADEM, certified that the Alabama SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Alabama.

Alabama's infrastructure submission, provided to EPA on December 10, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS. EPA has determined that Alabama's December 10, 2007, infrastructure submission is consistent with section 110 of the CAA. Additionally, EPA is responding to adverse comments received on EPA's March 17, 2011, proposed approval of Alabama's December 10, 2007, infrastructure submission. The responses to comments are found in Section IV below.

IV. EPA's Response to Comments

EPA received one set of comments on the March 17, 2011, proposed rulemaking to approve Alabama's December 10, 2007, infrastructure submission as meeting the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Generally, the Commenter's concerns relate to whether EPA's approval of Alabama's December 10, 2007, infrastructure submission is in compliance with section 110(l) of the CAA, and whether EPA's approval will interfere with the State's compliance with the CAA's prevention of significant deterioration (PSD) requirements. A full set of the comments provided on behalf of the Kentucky Environmental Foundation (hereinafter referred to as "the Commenter") is provided in the docket for today's final action. A

summary of the comments and EPA's response are provided below.

Comment 1: Under the header "No Clean Air Act Section 110(l) Analysis," the Commenter states "Before providing the technical analysis for why finalizing this proposed rule would be contrary to the Clean Air Act, I wish to point out that it is 2011 and EPA has yet to ensure that these areas have plans to meet the 1997 National Ambient Air Quality Standard[s] (NAAQS) for ozone." The Commenter goes on to state that "EPA acknowledged that the science indicates that the 1997 NAAQS, which is effectively 85 parts per billion (ppb), does not protect people's health or welfare when in 2008, EPA set a new ozone NAAQS at 75 ppb."

Response 1: As noted in EPA's proposed rulemaking on Alabama's December 10, 2007, infrastructure submission and in today's final rulemaking, the very action that EPA is undertaking is a determination that Alabama has a plan to ensure compliance with the 1997 8-hour ozone NAAQS. Alabama's submission was provided on December 10, 2007, for the 1997 8-hour ozone NAAQS, thus the State's submission predates the release of the revision to the 8-hour ozone NAAQS on March 12, 2008, and is distinct from any plan that Alabama would have to provide to ensure compliance of the 2008 NAAQS. This action is meant to address, and EPA is approving, the 1997 ozone infrastructure requirements under section 110 of the Act. In today's action EPA is not addressing the 110 infrastructure requirements for the 2008 ozone NAAQS as they will be addressed in a separate rulemaking.

EPA notes that the 1997 8-hour ozone standards as published in a July 18, 1997, final rulemaking notice (62 FR 38856) and effective September 18, 1997, are 0.08 parts per million (ppm), which is effectively 0.084 ppm or 84 ppb due to the rounding convention and not "effectively 85 parts per billion (ppb)" as the Commenter stated. Further, EPA agrees that the Agency has made the determination that the 1997 8-hour ozone NAAQS is not as protective as needed for public health and welfare, and as the Commenter mentioned, the Agency established a new ozone NAAQS at 75 ppb. However, the Agency is currently reconsidering the 2008 8-hour ozone NAAQS, and has not yet designated areas for any subsequent NAAQS.

Finally, while it is not clear which areas the Commenter refers to in stating "EPA has yet to ensure these areas have plans to meet" the 1997 ozone NAAQS, EPA believes this concern is addressed

by the requirements under section 172, Part D, Title I of the Act for states with nonattainment areas for the 1997 ozone NAAQS to submit nonattainment plans. As discussed in EPA's notice proposing approval of the Alabama infrastructure SIP, submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA are outside the scope of this action, as such plans are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172.¹⁸

Comment 2: Also under the header "No Clean Air Act Section 110(l) analysis," the Commenter cites the section 110(l) CAA requirement, and states "Clean Air Act § 110(l) requires 'EPA to evaluate whether the plan as revised will achieve the pollution reductions required under the Act, and the absence of exacerbation of the existing situation does not assure this result.' *Hall v. EPA*, 273 F.3d 1146, 1152 (9th Cir. 2001)." The Commenter goes on to state that "* * * the **Federal Register** notices are devoid of any analysis of how these rule makings will or will not interfere with attaining, making reasonable further progress on attaining and maintaining the 75 ppb ozone NAAQS as well as the 1-hour 100 ppb nitrogen oxides NAAQS."

Response 2: EPA agrees with the Commenter's assertion that consideration of section 110(l) of the CAA is necessary for EPA's action with regard to approving the State's submission. However, EPA disagrees with the Commenter's assertion that EPA did not consider 110(l) in terms of the March 17, 2011, proposed action. Further, EPA disagrees with the Commenter's assertion that EPA's proposed March 17, 2011, action does not comply with the requirements of section 110(l). Section 110(l) provides in part: "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter."

EPA has consistently interpreted section 110(l) as not requiring a new attainment demonstration for every SIP submission. The following actions are examples of where EPA has addressed

¹⁷ EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

¹⁸ Currently, Alabama does not have any nonattainment areas for the 1997 8-hour ozone NAAQS. The Birmingham, Alabama area, which was previously designated nonattainment for this NAAQS, was redesignated to attainment and is currently attaining the 1997 8-hour ozone NAAQS.

110(l) in previous rulemakings: 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). Alabama's December 10, 2007, infrastructure submission does not revise or remove any existing emissions limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone NAAQS. Simply put, it does not make any substantive revision that could result in any change in emissions. As a result, the submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of Alabama's December 10, 2007, infrastructure submission will not interfere with attainment or maintenance of any NAAQS.

Comment 3: Under the header "No Clean Air Act Section 110(l) analysis," the Commenter states that "We are not required to guess what EPA's Clean Air Act 110(l) analysis would be. Rather, EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis." Further, the Commenter states that "EPA cannot include its analysis in its response to comments and approve the actions without providing the public with an opportunity to comment on EPA's Clean Air Act § 110(l) analysis."

Response 3: Please see Response 2 for a more detailed explanation regarding EPA's response to the Commenter's assertion that EPA's action is not in compliance with section 110(l) of the CAA. EPA does not agree with the Commenter's assertion that EPA's analysis did not consider section 110(l) and so therefore "EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis." Every action that EPA takes to approve a SIP revision is subject to section 110(l) and thus EPA's consideration of whether a state's submission "would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter" is inherent in EPA's action to approve or disapprove a submission from a state. In the "Proposed Action" section of the March 17, 2011, rulemaking, EPA notes that "EPA is proposing to approve Alabama's infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA." Section 110(l) is a component of section 110, so EPA believes that this provides sufficient notice that EPA considered section

110(l) for the proposed action and concluded that section 110(l) was not violated.

Further, EPA does not agree with the Commenter's assertion that the Agency cannot provide additional clarification in response to a comment concerning section 110(l) and take a final approval action without "providing the public with an opportunity to comment on EPA's Clean Air Act § 110(l) analysis." Clearly such a broad proposition is incorrect where the final rule is a logical outgrowth of the proposed rule. In fact, the proposition that providing an analysis for the first time in response to a comment on a rulemaking per se violates the public's opportunity to comment has been rejected by the D.C. Circuit Court of Appeals. See *Int'l Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 632 n.51 (D.C. Cir. 1973).

Finally, as previously mentioned, EPA's approval of Alabama's December 10, 2007, infrastructure submission does not make any substantive revision that could result in any change in emissions, so there is no further "analysis" beyond whether the state has adequate provisions in its SIP to address the infrastructure requirements for the 1997 8-hour ozone NAAQS. EPA's March 17, 2011, proposed rulemaking goes through each of the relevant infrastructure requirements and provides detailed information on how Alabama's SIP addresses the relevant infrastructure requirements. Beyond making a general statement indicating that Alabama's submission is not in compliance with section 110(l) of the CAA, the Commenter does not provide comments on EPA's detailed analysis of each infrastructure requirement to indicate that Alabama's infrastructure submission for the 1997 8-hour ozone NAAQS is deficient in meeting these individual requirements. Therefore, the Commenter has not provided a basis to question the Agency's determination that Alabama's December 10, 2007, infrastructure submission meets the requirements for the infrastructure submission for the 1997 8-hour ozone NAAQS, including section 110(l) of the CAA.

Comment 4: Under the header "No Clean Air Act Section 110(l) analysis," the Commenter further asserts that "EPA's analysis must conclude that this proposed action would [violate] § 110(l) if finalized." An example given by the Commenter is as follows: "For example, a 42 U.S.C. 7502(a)(2)(j) public notification program based on a 85 [parts per billion (ppb)] ozone level interferes with a public notification program that should exist for a 75 ppb ozone level. At its worst, the public

notification system would be notifying people that the air is safe when in reality, based on the latest science, the air is not safe. Thus, EPA would be condoning the states providing information that can physical[ly] hurt people."

Response 4: EPA disagrees with the Commenter's statement that EPA's analysis must conclude that this proposed action would be in violation of section 110(l) if finalized. As mentioned above, Alabama's December 10, 2007, infrastructure submission does not revise or remove any existing emissions limit for any NAAQS, nor does it make any substantive revision that could result in any change in emissions. EPA has concluded that Alabama's December 10, 2007, infrastructure submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of Alabama's December 10, 2007, infrastructure submission will not interfere with attainment or maintenance of any NAAQS. See Response 2 and Response 3 above for a more detailed discussion.

EPA also disagrees with the specific example provided by the Commenter that the section 110(a)(2)(j) requirement for public notification for the 1997 8-hour ozone NAAQS based on 85 ppb interferes with a public notification program that should exist for a 75 ppb ozone level, and "EPA would be condoning the states providing information that can physical[ly] hurt people." As noted in Response 1, Alabama's December 10, 2007, infrastructure submission was provided to address the 1997 8-hour ozone NAAQS and was submitted prior to EPA's promulgation of the 2008 8-hour ozone in March 2008. Thus, Alabama provided sufficient information at that time to meet the requirement for the 1997 8-hour ozone NAAQS which is the subject of this action.

Finally, members of the public do get information related to the more recent NAAQS via the Air Quality Index (AQI) for ozone. When EPA promulgated the 2008 NAAQS (73 FR 16436, March 27, 2008), EPA revised the AQI for ozone to show that at the level of the 2008 ozone NAAQS the AQI is set to 100, which indicates unhealthy ozone levels. It is this revised AQI that EPA uses to both forecast ozone levels and to provide notice to the public of current air quality. The EPA AIRNOW system uses the revised AQI as its basis for ozone. In addition, when Alabama forecasts ozone and provides real-time ozone information to the public, either through the AIRNOW system or through its own internet based system, the State uses the

revised ozone AQI keyed to the 2008 revised ozone NAAQS. EPA believes this should address the Commenter's legitimate assertion.

Comment 5: Under the header "No Clean Air Act Section 110(l) Analysis," the Commenter asserts that "if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes, this interferes with the requirement that PSD programs require sources to demonstrate that they will not cause or contribute to a violation of a NAAQS because this requirement includes the current 75 ppb ozone NAAQS."

Response 5: EPA believes that this comment gives no basis for concluding that approval of the Alabama infrastructure SIP violates the requirements of section 110(l). EPA assumes that the comment refers to the requirement that owners and operators of sources subject to PSD demonstrate that the allowable emissions from the proposed source or emission increases from a proposed modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to a violation of any NAAQS. 40 CFR 51.166(k)(1).

EPA further assumes that the Commenter's statement "if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes" refers to a hypothetical SIP-approved PSD program that only requires owners and operators of sources subject to PSD to make the demonstration discussed above for the 1997 ozone NAAQS, and not for the 2008 ozone NAAQS. However, the Commenter gives no indication that Alabama's SIP-approved PSD program suffers from this alleged defect. EPA has examined the relevant provision in Alabama's SIP, Regulation 335-3-14-.04(2)(10)—*Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration Permitting (PSD))—Definitions—Source Impact Analysis*, and has determined that the language is nearly identical to that in 51.166(k)(1), and thus satisfies the requirements of this federal provision.

Furthermore, as discussed in detail above, the infrastructure SIP makes no substantive change to any provision of Alabama's SIP-approved PSD program, and therefore does not violate the requirements of section 110(l). Had Alabama submitted a SIP revision that substantively modified its PSD program to limit the required demonstration to just the 1997 ozone NAAQS, then the comment might have been relevant to a 110(l) analysis of that hypothetical SIP revision. However, in this case, the comment gives no basis for EPA to

conclude that the Alabama infrastructure SIP would interfere with any applicable requirement of the Act.

EPA concludes that approval of Alabama's December 10, 2007, infrastructure submission will not make the status quo air quality worse and is in fact consistent with the development of an overall plan capable of meeting the Act's requirements. Accordingly, when applying section 110(l) to this submission, EPA finds that approval of Alabama's December 10, 2007, infrastructure submission is consistent with section 110 (including section 110(l)) of the CAA.

Comment 6: The Commenter provided comments opposing the proposed approval of the infrastructure submission because it did not identify a specific model to be used to demonstrate that a PSD source will not cause or contribute to a violation of the ozone NAAQS. Specifically, the Commenter stated: "[t]he SIP submittals do not comply with Clean Air Act 110(a)(2)(j), (K), and (D)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source of modification will not cause or contribute to a violation [or] the ozone NAAQS."

The commenter asserted that because EPA does not require the use of a specific model, states use no modeling or use deficient modeling to evaluate these impacts. Specifically, the commenter alleged: "[m]any states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling (e.g. Kentucky using modeling from Georgia for the J.K. Smith proposed facility) is allowed."

To support the argument that EPA should designate a particular model and require states to use it, the Commenter attached and incorporated by reference a prior petition for rulemaking requesting that EPA designate such a model.¹⁹ The petition in question was submitted by Robert Ukeiley on behalf of the Sierra Club on July 28, 2010, requesting EPA to designate air quality models to use for PSD permit applications with regard to ozone and PM_{2.5}. As supporting documentation for that petition for rulemaking, the Commenter also resubmitted 15 attachments in the comment on EPA's proposed approval of the infrastructure

submission. These attachments were as follows:

1. Exhibit 1: Comments from Camille Sears on the Ninth Conference on Air Quality Modeling (*Docket ID:* EPA-HQ-OAR-2008-0604) (November 10, 2008);

2. Exhibit 2: "Response to Petitions for Review, Supplemental Briefs, and Amicus Brief" regarding the Desert Rock Energy Company, LLC from Ann Lyons, EPA Region 9—Office of Regional Counsel and Brian L. Doster/Elliott Zenick, EPA Headquarters—Office of General Counsel (January 8, 2009);

3. Exhibit 3: Report, The Kentucky Natural Resources and Environmental Protection Cabinet, A Cumulative Assessment of the Environmental Impacts Caused by Kentucky Electric Generating Units, (December 17, 2001);

4. Exhibit 4: Letter from Richard A. Wayland, Director of the Air Quality Assessment Division, EPA Office Air Quality and Planning Standards to Robert Ukeiley regarding Mr. Ukeiley's Freedom of Information Act (FOIA) request on behalf of the Sierra Club for documents related to EPA development of a modeling protocol for PM_{2.5} (October 1, 2008);

5. Exhibit 5: Expert Report of Lyle R. Chinkin and Neil J. M. Wheeler, Analysis of Air Quality Impacts, prepared for Civil Action No. IP99-1693 C-M/S *United States v. Cinergy Corp.*, (August 28, 2008);

6. Exhibit 6: Illinois Environmental Protection Agency, Bureau of Air, Assessing the impact on the St. Louis Ozone Attainment Demonstration from the proposed electrical generating units in Illinois" (September 25, 2003);

7. Exhibit 7: Memorandum from Stephen D. Page, Director, EPA Office Air Quality and Planning Standards entitled, "Modeling Procedures for Demonstrating Compliance with the PM_{2.5} NAAQS" (March 23, 2010);

8. Exhibit 8: E-mail from Scott B. (Title and Affiliation not provided), to Donna Lucchese, (Title and Affiliation not provided), entitled, "Ozone impact of point source" (Date described as "Early 2000");

9. Exhibit 9: E-mail from Mary Portanova, EPA, Region 5, to Noreen Weimer, EPA, Region 5, entitled "FOIA—Robert Ukeiley—RIN-02114-09" (October 20, 2009, 10:05 CST);

10. Exhibit 10: Synopsis from PSD Modeling Workgroup—EPA/State/Local Workshop, New Orleans (May 17, 2005);

11. Exhibit 11: Letter from Carl E. Edlund, P.E., Director, EPA, Region 6 Multimedia Planning and Permitting Division to Richard Hyde, P.E. Deputy Director of the Office of Permitting and Registration, Texas Commission on Environmental Quality regarding

¹⁹ The Commenter attached the July 28, 2010, "Petition for Rulemaking To Designate Air Quality Models To Use for PSD Permit Applications With Regard to Ozone and PM_{2.5}," from Robert Ukeiley on behalf of the Sierra Club.

“White Stallion Energy Center, PSD Permit Nos. PSD-TX-1160, PAL 26, and HAP 28” (February 10, 2010);

12. Exhibit 12: Memorandum from John S. Seitz, Director, EPA Office of Air Quality Planning & Standards entitled, “Interim Implementation of New Source Review Requirements for PM_{2.5}” (October 23, 1997);

13. Exhibit 13: Presentation by Erik Snyder and Bret Anderson (Titles and Affiliations not provided), to R/S/L Workshop, Single Source Ozone/PM_{2.5} Impacts in Regional Scale Modeling & Alternate Methods, (May 18, 2005);

14. Exhibit 14: Letter from Richard D. Scheffe, PhD, Senior Science Advisor, EPA, Office of Air Quality Planning & Standards to Abigail Dillen in response to an inquiry regarding the applicability of the Scheffe Point Source Screening Tables (July 28, 2000);

15. Exhibit 15: Presentation by Gail Tonnesen, Zion Wang, Mohammad Omary, Chao-Jung Chien (University of California, Riverside); Zac Adelman (University of North Carolina); Ralph Morris et al. (ENVIRON Corporation Int., Novato, CA) to the Ozone MPE, TAF Meeting, Review of Ozone Performance in WRAP Modeling and Relevance to Future Regional Ozone Planning, (July 30, 2008).

Finally, the Commenter stated that “EPA has issued guidance suggesting [that] PSD sources should use the ozone limiting method for NO_x modeling.” The Commenter referred to EPA’s March 2011 NO_x modeling guidance to support this position.²⁰ The Commenter then asserts that this “ozone modeling” helps sources demonstrate compliance and that sources should also do ozone modeling that may inhibit a source’s permission to pollute. The Commenter argues that EPA’s guidance supports the view that EPA must require states to require a specific model in their SIPs to demonstrate that proposed PSD sources do not cause or contribute to a violation of the ozone NAAQS.

Response 6: EPA disagrees with the Commenter’s views concerning modeling in the context of acting upon the infrastructure submission. The Commenter raised four primary interrelated arguments: (1) The state’s infrastructure SIP must specify a required model; (2) the failure to specify a model leads to inadequate analysis; (3) the attached petition for rulemaking explains why EPA should require states

to specify a model; and (4) a recent guidance document concerning modeling for NO_x sources recommends using ozone limit methods for NO_x sources and EPA could issue comparable guidance for modeling ozone from a single source.

At the outset, EPA notes that although the Commenter sought to incorporate by reference the prior petition for rulemaking requesting EPA to designate a particular model for use by states for this purpose, the Agency is not required to respond to that petition in the context of acting upon the infrastructure submission. In reviewing the infrastructure submission, EPA is evaluating the state’s submission in light of current statutory and regulatory requirements, not in light of potential requirements that EPA has been requested to establish in a petition. Moreover, the petition arose in a different context, requests different relief, and raises other issues unrelated to those concerning ozone modeling raised by the Commenter in this action. EPA believes that the appropriate place to respond to the issues raised in the petition is in a petition response. Accordingly, EPA is not responding to the July 28, 2010 petition in this action. The issues raised in that petition are under separate consideration.

EPA believes that the comment concerning the approvability of the infrastructure submission based upon whether the SIP specifies the use of a particular model are germane to this action, but EPA disagrees with the Commenter’s conclusions. The Commenter stated that the SIP submittals “do not comply with Clean Air Act 110(a)(2)(f), (K), and (D)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source [or] modification will not cause or contribute to a violation of the ozone NAAQS.” EPA’s PSD permitting regulations are found at 40 CFR 51.166 and 52.21. PSD requirements for SIPs are found in 40 CFR 51.166. Similar PSD requirements for SIPs that have been disapproved with respect to PSD and for SIPs incorporating EPA’s regulations by reference are found in 40 CFR 52.21. The PSD regulations require an ambient impact analysis for ozone for proposed major stationary sources and major modifications to obtain a PSD permit (40 CFR 51.166(b)(23)(i), (i)(5)(i)(f)),²¹

(k), (l) and (m) and 40 CFR 52.21(b)(23)(i), (i)(5)(i)(f),²² (k), (l) and (m)). The regulations at 40 CFR 51.166(l) state that for air quality models the SIP shall provide for procedures which specify that:

(1) All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in Appendix W of this part (Guideline on Air Quality Models).

(2) Where an air quality model specified in Appendix W of this part (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102.

These parts of 40 CFR part 51 and 52 are the umbrella SIP components that states have either adopted by reference or the states have been approved or delegated authority to incorporate the PSD requirements of the CAA. As discussed above, these part 51 and 52 PSD provisions refer to 40 CFR part 51, Appendix W for the appropriate model to utilize for the ambient impact assessment. 40 CFR part 51, Appendix W is the Guideline on Air Quality models and Section 1.0.a. states:

The *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source review (NSR), including prevention of significant deterioration (PSD). [footnotes not included]. Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies, and by industry. * * * The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.

Appendix W Section 5.2.1. includes the *Guideline* recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Specifically, Section 5.2.1.c. states:

Estimating the Impact of Individual Sources. Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions.

an ambient impact analysis, including the gathering of ambient air quality data.”

²² *Id.*

²⁰ The Commenter attached an EPA memorandum dated March 1, 2011 entitled: “Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO₂ National Ambient Air Quality Standard,” from Tyler Fox, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards.

²¹ Citation includes a footnote: “No de minimis air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform

Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).

Appendix W Section 5.2.1.c. provides that the model users (state and local permitting authorities and permitting applicants) should work with the appropriate EPA Regional Office on a case-by-case basis to determine an adequate method for performing an air quality analysis for assessing ozone impacts. Due to the complexity of modeling ozone and the dependency on the regional characteristics of atmospheric conditions, EPA believes this is an appropriate approach rather than specifying one particular preferred model nationwide, which may not be appropriate in all circumstances. Instead, the choice of method “depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office * * *.” Appendix W Section 5.2.1.c. Therefore, EPA continues to believe it is appropriate for permitting authorities to consult and work with EPA Regional Offices as described in Appendix W, including section 3.0.b and c, 3.2.2, and 3.3, to determine the appropriate approach to assess ozone impacts for each PSD required evaluation.^{23, 24, 25, 26}

²³ 40 CFR part 51 Appendix W, Section 3.0.b. states: “In this guidance, when approval is required for a particular modeling technique or analytical procedure, we often refer to the ‘appropriate reviewing authority’. In some EPA regions, authority for NSR and PSD permitting and related activities have been delegated to State and even local agencies. In these cases, such agencies are ‘representatives’ of the respective regions. Even in these circumstances, the Regional Office retains authority in decisions and approvals. Therefore, as discussed above and depending on the circumstances, the appropriate reviewing authority may be the Regional Office, Federal Land Manager(s), State agency(ies), or perhaps local agency(ies). In cases where review and approval comes solely from the Regional Office (sometimes stated as ‘Regional Administrator’), this will be stipulated. If there is any question as to the appropriate reviewing authority, you should contact the Regional modeling contact (<http://www.epa.gov/scram001/tt28.htm#regionalmodelingcontacts>) in the appropriate EPA Regional Office, whose jurisdiction generally includes the physical location of the source in question and its expected impacts.”

²⁴ 40 CFR Part 51 Appendix W, Section 3.0.c. states: “In all regulatory analyses, especially if other-than-preferred models are selected for use, early discussions among Regional Office staff, State and local control agencies, industry representatives, and where appropriate, the Federal Land Manager, are invaluable and encouraged. Agreement on the data base(s) to be used, modeling techniques to be applied and the overall technical approach, prior to the actual analyses, helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The use of an air quality analysis checklist, such as is posted on EPA’s Internet SCRAM Web site (subsection 2.3), and the preparation of a written protocol help to keep misunderstandings at a minimum.”

²⁵ 40 CFR part 51 Appendix W, Section 3.2.2.a states: “Determination of acceptability of a model

Although EPA has not selected one particular preferred model in Appendix A of Appendix W (Summaries of Preferred Air Quality Models) for conducting ozone impact analyses for individual sources, state/local permitting authorities must comply with the appropriate PSD FIP or SIP requirements with respect to ozone.

The current SIP meets the requirements of 40 CFR 51.166(l)(1). Specifically, the Alabama SIP states at Alabama Air Regulations 335–3–14–.04 (11) *Air Quality Models*:

All estimates of ambient concentrations required under this Rule shall be based on the applicable air quality models, data bases, and other requirements specified in the “Guideline on Air Quality Models”. (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711).

This statement in the federally approved Alabama SIP is a direct reference to EPA’s “Guideline on Air Quality Models” at 40 CFR part 51, Appendix W. The commitment in Alabama’s SIP to implement and adopt air quality models utilizing 40 CFR part 51, Appendix W as a basis is appropriate and consistent with federal regulations.

Alabama requires that PSD permit applications contain an analysis of ozone impacts from the proposed project.²⁷ As recommended by Appendix W, the methods used for the ozone impacts analysis for individual PSD permit actions are determined on a

is a Regional Office responsibility. Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the recommendations of this subsection. This finding will normally result from a determination that (1) A preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or analytical procedure is available and applicable.”

²⁶ 40 CFR part 51 Appendix W, Section 3.3.a. states: “The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness and consistency in modeling decisions is fostered among the various Regional Offices and the States. To satisfy that need, EPA established the Model Clearinghouse and also holds periodic workshops with headquarters, Regional Office, State, and local agency modeling representatives. Section 3.3.b. states: “The Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the Regional Office may request assistance from the Model Clearinghouse after an initial evaluation and decision has been reached concerning the application of a model, analytical technique or data base in a particular regulatory action.” (footnote omitted).

²⁷ Alabama Administrative Code 335–3–14–.04(2)(w), (8)(a), (8)(h)(1), (10)(a), and (12).

case-by-case basis. Alabama consults with EPA Region 4 on a case-by-case basis for evaluating the adequacy of the ozone impact analysis. When appropriate, EPA Region 4 provides input/comments on the analysis. As stated in Section 5.2.1.c. of Appendix W, the “[c]hoice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions.” Therefore, based on an evaluation of the source, its emissions and background ozone concentrations, an ozone impact analysis other than modeling may be required. While in other cases a complex photochemical grid type modeling analysis, as discussed below, may be warranted. As noted, the appropriate methods are determined in consultation with EPA Region 4 on a case-by-case basis.

As a second point, the Commenter asserted that states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling is allowed.

EPA agrees that States should not be using inappropriate analytical tools in this context. For example, the Commenter’s Exhibit 14 does discuss the inappropriateness of using a screening technique referred to as the “Scheffe Tables.” The Commenter is correct that the use of “Scheffe Tables” and other particular screening techniques, which involve ratios of nitrogen oxides (NO_x) to volatile organic compounds (VOC) that do not consider the impact of biogenic emissions, or that use other outdated or irrelevant modeling, is inappropriate to evaluate a single source’s ozone impacts on an air quality control region. More scientifically appropriate screening and refined tools are available and should be considered for use. Therefore, EPA continues to believe States should consult and work with EPA Regional Offices as described in Appendix W on a case-by-case basis to determine the appropriate method for estimating the impacts of these ozone precursors from individual sources.

For ozone, a proposed emission source’s impacts are dependent upon local meteorology and pollution levels in the surrounding atmosphere. Ozone is formed from chemical reactions in the atmosphere. The impact a new or modified source can have on ozone levels is dependent, in part, upon the existing atmospheric pollutant loading already in the region with which emissions from the new or modified source can react. In addition, meteorological parameters such as wind

speed, temperature, wind direction, solar radiation influx, and atmospheric stability are also important factors. The more sophisticated analyses consider meteorology and interactions with emissions from surrounding sources. EPA has not identified an established modeling system that would fit all situations and take into account all of the additional local information about sources and meteorological conditions. The Commenter submitted a number of exhibits (including Exhibits 10, 11, and 13) in which EPA has previously indicated a preference for using a photochemical grid model when appropriate modeling databases exist and when it is acceptable to use the photochemical grid modeling to assess a specific source.

Commenter's Exhibit 13 includes a list of issues to evaluate, which aid in considering if the existing photochemical grid modeling databases are acceptable, and discusses the need for permitting authorities to consult with the EPA Regional Office in determining if photochemical grid modeling would be appropriate for conducting an ozone impacts analysis. In these documents EPA has indicated that photochemical grid modeling (e.g., CAMx or CMAQ) is generally the most sophisticated type of modeling analysis for evaluating ozone impacts, and it is usually conducted by adding a source into an existing modeling system to determine the change in impact from the source. The analysis is done by comparing the photochemical grid modeling results, which include the new or modified source under evaluation, with the results from the original modeling analysis that does not contain the source. Photochemical grid modeling is often an excellent modeling exercise for evaluating a single source's impacts on an air quality control region when such models are available and appropriate to utilize because they take into account the important parameters and the models have been used in regional modeling for attainment SIPs.

The use of reactive plume models may also be appropriate under certain circumstances. EPA has approved the use of plume models in some instances, but these models are not always appropriate because of the difficulty in obtaining the background information to make an appropriate assessment of the photochemistry and meteorology impacts.

EPA has not selected a specific "preferred" model for conducting an ozone impact analysis. Model selection normally depends upon the details about the modeling systems available and if they are appropriate for assessing

the impacts from a proposed new source or modification. Considering that a photochemical modeling system with inputs, including meteorological and emissions data, that would also have to be evaluated for model performance, could potentially be costly and time consuming to develop, EPA has taken a case-by-case evaluation approach. Such photochemical modeling databases are typically developed so that impacts of regulatory actions across multiple sources can be evaluated, and therefore the time and financial costs can be absorbed by the regulatory body. It is these types of databases that have the potential to be used to assess single source ozone impacts after they have been developed as part of a regional modeling demonstration to support a SIP. From a cost and time requirement standpoint, EPA would generally not expect a single source to develop an entire photochemical modeling system just to evaluate its individual impacts on an air quality region, as long as other methods of analyzing ozone impacts are available and acceptable to EPA.

When an existing photochemical modeling system is deemed appropriate, it is an excellent tool to evaluate the ozone impact that a single source's emissions can have on an air quality region in the context of PSD modeling and should be evaluated for potential use. More often now than 10 or 15 years ago, a photochemical modeling system may be available that covers the geographic area of concern. EPA notes that even where photochemical modeling is readily available, it should be evaluated as part of the development of a modeling protocol, in consultation with the Regional Office to determine its appropriateness for conducting an impact analysis for a particular proposed source or modification.²⁸ Factors to consider when evaluating the appropriateness of a particular photochemical modeling system include, but are not limited to, meteorology, year of emissions projections, model performance issues in the area of concern or in areas that might impact projections in the area of concern. Therefore, even where photochemical modeling systems exist, there may be circumstances where their use is inappropriate for estimating the ozone impacts of a proposed source or modification. Because of these scientific issues and the need for appropriate case-by-case technical considerations, EPA has not designated a single "Preferred Model" for conducting single

source impact analyses for ozone in Appendix A of Appendix W.

In summary, the Commenter states that many States abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling is allowed. For the reasons described in this response to comment, we do not believe that one modeling system is presently appropriate to designate for all situations, yet that does not relieve proposed sources and modifications from the obligation of making the required demonstration under the applicable PSD rules. The Alabama SIP contains a direct reference for use of the procedures specified in EPA's "Guideline on Air Quality Models" (40 CFR Part 51 Appendix W) for estimating ambient concentrations of criteria pollutants, including ozone (Alabama Air Pollution Control Regulation 335-3-14-.04(11) *Air Quality Models*). As such, Alabama requires that PSD permit applications contain an analysis of ozone impacts from the proposed project. As recommended by Appendix W, the methods used for the ozone impacts analysis are determined on a case-by-case basis. Alabama consults with EPA Region 4 on a case-by-case basis for evaluating the adequacy of the ozone impact analysis. When appropriate, EPA Region 4 provides input/comments on the analysis. Because EPA has not designated one particular model as being appropriate in all situations for evaluating single source ozone impacts, EPA Region 4 concurs with Alabama's proposed approach.

In conclusion, for the reasons stated above it is difficult to identify and implement a standardized national model for ozone. EPA has had a standard approach in its PSD SIP and FIP rules of not mandating the use of a particular model for all circumstances, instead treating the choice of a particular method for analyzing ozone impacts as circumstance-dependent. EPA then determines whether the State's implementation plan revision submittal meets the PSD SIP requirements. For purposes of review for this infrastructure SIP, Alabama has an EPA-approved PSD SIP that meets the EPA PSD SIP requirements.

Finally, the Commenter argued that EPA's March 2011 guidance concerning modeling for the 1-hour nitrogen dioxide (NO₂) NAAQS demonstrates that similar single source modeling could be conducted for sources for purposes of the ozone NAAQS. Specifically, the commenter argued that the model used for other criteria

²⁸ 40 CFR part 51 Appendix W, Sections 3.0, 3.2., 3.3, 5.2.1.c and commenter Exhibit 13.

pollutants (AERMOD), incorporates ozone chemistry for modeling NO₂ and therefore is modeling ozone chemistry for a single source. The Commenter stated that this guidance suggested that PSD sources should use the ozone limiting method for NO_x modeling.²⁹ Further, the Commenter noted that this technique “is modeling of ozone chemistry for a single source” and therefore, that this modeling with ozone chemistry allows a source to be permitted. The commenter concludes with the assertion that EPA must require the SIPs to include a model to use to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS.

EPA’s recent March 2011 guidance for the NO₂ NAAQS does discuss using two different techniques to estimate the amount of conversion of NO_x emissions to NO₂ ambient NO₂ concentrations as part of the NO₂ modeling guidance. NO_x emissions are composed of NO and NO₂ molecules. These two techniques, which have been available for years, are the Ozone Limiting Method (OLM), which was mentioned by the Commenter, and the Plume Volume Molar-Ratio-Method (PVMRM). Both of these techniques are designed and formulated based on the principle of assuming available atmospheric ozone mixes with NO/NO₂ emissions from sources. This “mixing” results in ozone molecules reacting with the NO molecules to form NO₂ and O₂. This is a simple one-direction chemical reaction that is used to determine how much NO is converted to NO₂ for modeling of the NO₂ standard. Thus, these techniques do not predict ozone concentrations, rather they take ambient ozone data as model inputs to determine the calculation of NO conversion to NO₂. These techniques are not designed to calculate the amount of ozone that might be generated as the NO_x emissions traverses downwind of the source and potentially reacts with other pollutants in the atmosphere. Rather, these two techniques rely on a one-way calculation based on an ozone molecule (O₃) reacting with an NO molecule to generate an NO₂ molecule and an O₂ molecule.^{30, 31}

²⁹ The Commenter attached EPA memorandum dated March 1, 2011: “Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO₂ National Ambient Air Quality Standard,” from Tyler Fox, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards.

³⁰ “AERMOD: Model Formulation Document”, http://www.epa.gov/scram001/7thconf/aermod/aermod_mfd_addm_rev.pdf.

³¹ Hanrahan, P.L., 1999a. “The plume volume molar ratio method for determining NO₂/NO_x ratios in modeling. Part I: Methodology,” J. Air & Waste Manage. Assoc., 49, 1324–1331.

As previously mentioned, these two techniques do not attempt to estimate the amount of ozone that might be generated, and the models in which these techniques are applied are not designed or formulated to even account for the potential generation of ozone from emissions of NO/NO₂. Ozone chemistry has many cycles of destruction and generation and is dependent upon a large number of variables, including VOC concentrations and the specific types of VOC molecules present, other atmospheric pollutant concentrations, meteorological conditions, and solar radiation levels as already discussed in this response. Since OLM and PVMRM do not include any of these scientific principles and do not account for any chemical mechanisms that would generate ozone, these techniques cannot be used for determining potential changes in ozone levels from a proposed source or modification.

In summary, the Commenter asserts that the OLM technique models of ozone chemistry for a single source and that this modeling helps a source demonstrate compliance with the NO₂ standard. The Commenter is concerned that EPA has not designated a single specific OLM technique is not also used to determine ozone impacts and believes that EPA should rectify this concern. To do so the Commenter concludes that EPA must require the SIPs to include a model to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS. As previously discussed, EPA disagrees and reiterates that the OLM (and PVMRM) are simple chemistry techniques that are not formulated to be capable to determine potential ozone impacts from a proposed source or modification.

For the reasons discussed above, EPA does not believe that the comments provide a basis for not approving the infrastructure submission. In short, EPA has not modified the Guidelines in Appendix W for ozone impacts analysis for a single source (Appendix W part 5.2.1.c.) to require use of a specific model as the Commenter requests. EPA finds that the State has the appropriate regulations to operate the PSD program consistent with federally-approved requirements. Furthermore, we disagree that states are required to designate a specific model in the SIP, because App. W states that state and local agencies should consult with EPA on a case-by-case basis to determine what analysis to require.

V. Final Action

As already described, ADEM has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA’s October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Alabama. EPA is taking final action to approve Alabama’s December 10, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 30, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

- 2. Section 52.50(e) is amended by adding a new entry “110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards” at the end of the table to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	Alabama	12/10/2007	7/13/2011; [Insert citation of publication].	For the 1997 8-hour ozone NAAQS.

[FR Doc. 2011-17470 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2010-0721-201126 FRL-9436-4]

Approval and Promulgation of Implementation Plans; South Carolina; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the December 13, 2007, submission submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC) as demonstrating that the State meets the

state implementation plan (SIP) requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. South Carolina certified that the South Carolina SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in South Carolina (hereafter referred to as “infrastructure submission”). South Carolina’s infrastructure submission, provided to EPA on December 13, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS. Additionally, EPA is correcting an inadvertent error and responding to adverse comments received on EPA’s March 17, 2011, proposed approval of South Carolina’s December 13, 2007, infrastructure submission.

DATES: *Effective Date:* This rule will be effective August 12, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0721. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations, thus states were required to provide submissions to address sections 110(a)(1) and (2) of the CAA for this new NAAQS. South Carolina provided its infrastructure submission for the 1997 8-hour ozone NAAQS on December 13, 2007. On March 17, 2011, EPA proposed to approve South Carolina's December 13, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS. See 76 FR 14606. A summary of the background for today's final actions is provided below. See EPA's March 17, 2011, proposed rulemaking at 76 FR 14606 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP

submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below ¹ and in EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards."

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.²
- 110(a)(2)(D): Interstate transport.³

¹ Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how South Carolina's SIP addresses 110(a)(2)(C).

² This rulemaking only addresses requirements for this element as they relate to attainment areas.

³ Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by South Carolina consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve South Carolina's SIP revision, which was submitted to comply with CAIR. See 72 FR 57209 (October 9, 2007). In so doing, South Carolina's CAIR SIP revision addressed the interstate transport provisions in Section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has since proposed a new rule to address the interstate transport of NO_x and SO_x in the eastern United States. See 75 FR 45210 (Aug.

- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁴
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM_{2.5} NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.⁵ The Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction ("SSM") at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emission limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"). EPA notes that there are two other substantive issues for which EPA

2, 2010) ("the Transport Rule"). However, because this rule has yet to be finalized, EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

⁴ This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," but as previously discussed is not relevant to today's final rulemaking.

⁵ See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA-R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

likewise stated that it would respond separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP-approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, that "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and PM_{2.5} NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To

the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)" and that these SIPs are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as "infrastructure SIPs." This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other requirements, such as "nonattainment SIP" submissions required to address the nonattainment planning requirements of part D, "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details

concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.⁶ Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.⁷

Notwithstanding that section 110(a)(2) states that "each" SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).⁸ This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general "infrastructure SIP" for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter "interstate transport" provisions within section 110(a)(2) and worked with states to address each of the four prongs of

⁶ For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

⁷ For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See, e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule," 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase "contribute significantly to nonattainment").

⁸ *See, e.g., id.*, 70 FR 25162, at 25163–25165 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.⁹ This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.¹⁰

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C (*i.e.*, the PSD requirement applicable in attainment areas). Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential ambiguity of the statutory language of section 110(a)(1)

and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements "as applicable." In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.¹¹ Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the "infrastructure" elements for SIPs, which it further described as the "basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards."¹² As further identification of these basic structural SIP requirements, "attachment A" to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended "to constitute an interpretation of" the requirements, and was merely a "brief description of the required elements."¹³ EPA also stated its belief that with one exception, these requirements were "relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with

assistance from EPA Regions."¹⁴ For the one exception to that general assumption—how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS—EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM_{2.5} NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief a state's submission should establish that the state has the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is

⁹ EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM_{2.5} NAAQS. See, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

¹⁰ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

¹¹ See, "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the "2007 Guidance"). EPA issued comparable guidance for the 2006 PM_{2.5} NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)," from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the "2009 Guidance").

¹² 2007 Guidance at page 2.

¹³ *Id.*, at attachment A, page 1.

¹⁴ *Id.*, at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so "self explanatory," and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA’s 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a “SIP call” whenever the Agency determines that a state’s SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.¹⁵ Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹⁶

¹⁵ EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,” 74 FR 21639 (April 18, 2011).

¹⁶ EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,” 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6)

Significantly, EPA’s determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency’s subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director’s discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.¹⁷

III. This Action

EPA is taking final action to approve South Carolina’s infrastructure submission as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. South Carolina, through SC DHEC, certified that the South Carolina SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in South Carolina. Additionally, on June 23, 2011, South Carolina’s infrastructure submission, provided to EPA on December 13, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

On June 23, 2011, EPA published a final rulemaking action approving revisions to South Carolina’s New Source Review (NSR) requirements incorporating the Phase II NSR permitting requirements and specifically identifying nitrogen oxides (NO_x) as an ozone precursor under the NSR program. See 76 FR 36875. EPA is not taking action today on South Carolina’s NSR program, as these

to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

¹⁷ EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director’s discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director’s discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

requirements are already approved in South Carolina’s SIP.

EPA is also correcting an inadvertent error found in the Section I of the March 17, 2011 proposed approval. See 76 FR 14606. The last sentence in paragraph four of this Section states, “This action is not approving any specific rule, but rather proposing that Alabama’s already approved SIP meets certain CAA requirements.” In this action, EPA is correcting this sentence to read, “This action is not approving any specific rule, but rather proposing that South Carolina’s already approved SIP meets certain CAA requirements.” EPA can identify no particular reason why the public would be interested in being notified of the correction of this inadvertent error or in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the meaning of the regulations at issue or otherwise change EPA’s analysis of South Carolina’s 1997 8-hour ozone infrastructure submission.

EPA has determined that South Carolina’s December 13, 2007, infrastructure submission is consistent with section 110 of the CAA and is responding to adverse comments received on EPA’s March 17, 2011, proposed approval of South Carolina’s December 13, 2007, infrastructure submission. The responses to comments are found in Section IV below.

IV. EPA’s Response to Comments

EPA received one set of comments on the March 17, 2011, proposed rulemaking to approve South Carolina’s December 13, 2007, infrastructure submission as meeting the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Generally, the Commenter’s concerns relate to whether EPA’s approval of South Carolina’s December 13, 2007, infrastructure submission is in compliance with section 110(l) of the CAA, and whether EPA’s approval will interfere with the State’s compliance with the CAA’s prevention of significant deterioration (PSD) requirements. A full set of the comments provided on behalf of the Kentucky Environmental Foundation (hereinafter referred to as “the Commenter”) is provided in the docket for today’s final action. A summary of the comments and EPA’s response are provided below.

Comment 1: Under the header “No Clean Air Act Section 110(l) analysis,” the Commenter states “Before providing the technical analysis for why finalizing this proposed rule would be contrary to the Clean Air Act, I wish to point out that it is 2011 and EPA has yet to ensure

that these areas have plans to meet the 1997 National Ambient Air Quality Standard[s] (NAAQS) for ozone.” The Commenter goes on to state that “EPA acknowledged that the science indicates that the 1997 NAAQS, which is effectively 85 parts per billion (ppb), does not protect people’s health or welfare when in 2008, EPA set a new ozone NAAQS at 75 ppb.”

Response 1: As noted in EPA’s proposed rulemaking on South Carolina’s December 13, 2007, infrastructure submission and in today’s final rulemaking, the very action that EPA is undertaking is a determination that South Carolina has a plan to ensure compliance with the 1997 8-hour ozone NAAQS. South Carolina’s submission was provided on December 13, 2007, for the 1997 8-hour ozone NAAQS, thus the State’s submission predates the release of the revision to the 8-hour ozone NAAQS on March 12, 2008, and is distinct from any plan that South Carolina would have to provide to ensure compliance of the 2008 NAAQS. This action is meant to address, and EPA is approving the 1997 ozone infrastructure requirements under section 110 of the Act. In today’s action EPA is not addressing the 110 infrastructure requirements for the 2008 ozone NAAQS as they will be addressed in a separate rulemaking.

EPA notes that the 1997 8-hour ozone standards as published in a July 18, 1997, final rulemaking notice (62 FR 38856) and effective September 18, 1997, are 0.08 parts per million (ppm), which is effectively 0.084 ppm or 84 ppb due to the rounding convention and not “effectively 85 parts per billion (ppb)” as the Commenter stated. Further, EPA agrees that the Agency has made the determination that the 1997 8-hour ozone NAAQS is not as protective as needed for public health and welfare, and as the Commenter mentioned, the Agency established a new ozone NAAQS at 75 ppb. However, EPA notes that the Agency is currently reconsidering the 2008 8-hour ozone NAAQS, and has not yet designated areas for any subsequent NAAQS.

Finally, while it is not clear which areas the Commenter refers to in stating “EPA has yet to ensure these areas have plans to meet” the 1997 ozone NAAQS, EPA believes this concern is addressed by the requirements under section 172, Part D, Title I of the Act for states with nonattainment areas for the 1997 ozone NAAQS to submit nonattainment plans. As discussed in EPA’s notice proposing approval of the South Carolina infrastructure SIP, submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning

requirements of part D, Title I of the CAA are outside the scope of this action, as such plans are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172.¹⁸

Comment 2: Also under the header “No Clean Air Act Section 110(l) analysis,” the Commenter cites the section 110(l) CAA requirement, and states “Clean Air Act § 110(l) requires ‘EPA to evaluate whether the plan as revised will achieve the pollution reductions required under the Act, and the absence of exacerbation of the existing situation does not assure this result.’ *Hall v. EPA*, 273 F.3d 1146, 1152 (9th Cir. 2001).” The Commenter goes on to state that “* * * the **Federal Register** notices are devoid of any analysis of how these rule makings will or will not interfere with attaining, making reasonable further progress on attaining and maintaining the 75 ppb ozone NAAQS as well as the 1-hour 100 ppb nitrogen oxides NAAQS.”

Response 2: EPA agrees with the Commenter’s assertion that consideration of section 110(l) of the CAA is necessary for EPA’s action with regard to approving the State’s submission. However, EPA disagrees with the Commenter’s assertion that EPA did not consider 110(l) in terms of the March 17, 2011, proposed action. Further, EPA disagrees with the Commenter’s assertion that EPA’s proposed March 17, 2011, action does not comply with the requirements of section 110(l). Section 110(l) provides in part: “[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter.”

EPA has consistently interpreted section 110(l) as not requiring a new attainment demonstration for every SIP submission. The following actions are examples of where EPA has addressed 110(l) in previous rulemakings: 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). South Carolina’s December 13, 2007, infrastructure submission does not revise or remove any existing emissions

limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone NAAQS or the new nitrogen dioxide (NO₂) NAAQS. Simply put, it does not make any substantive revision that could result in any change in emissions. As a result, the submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of South Carolina’s December 13, 2007, infrastructure submission will not interfere with attainment or maintenance of any NAAQS.

Comment 3: Under the header “No Clean Air Act Section 110(l) analysis,” the Commenter states that “We are not required to guess what EPA’s Clean Air Act 110(l) analysis would be. Rather, EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis.” Further, the Commenter states that “EPA cannot include its analysis in its response to comments and approve the actions without providing the public with an opportunity to comment on EPA’s Clean Air Act § 110(l) analysis.”

Response 3: Please see Response 2 for a more detailed explanation regarding EPA’s response to the Commenter’s assertion that EPA’s action is not in compliance with section 110(l) of the CAA. EPA does not agree with the Commenter’s assertion that EPA’s analysis did not consider section 110(l) and so therefore “EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis.” Every action that EPA takes to approve a SIP revision is subject to section 110(l) and thus EPA’s consideration of whether a state’s submission “would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter” is inherent in EPA’s action to approve or disapprove a submission from a state. In the “Proposed Action” section of the March 17, 2011, rulemaking, EPA notes that “EPA is proposing to approve South Carolina’s infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.” Section 110(l) is a component of section 110, so EPA believes that this provides sufficient notice that EPA considered section 110(l) for the proposed action and concluded that section 110(l) was not violated.

Further, EPA does not agree with the Commenter’s assertion that the Agency cannot provide additional clarification in response to a comment concerning

¹⁸ Currently, South Carolina does not have any areas violating the 1997 8-hour ozone NAAQS. The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina area has not been redesignated to attainment for this NAAQS, however, this area is currently attaining the 1997 8-hour ozone NAAQS with 2008–2010 data.

section 110(l) and take a final approval action without “providing the public with an opportunity to comment on EPA’s Clean Air Act § 110(l) analysis.” Clearly such a broad proposition is incorrect where the final rule is a logical outgrowth of the proposed rule. In fact, the proposition that providing an analysis for the first time in response to a comment on a rulemaking per se violates the public’s opportunity to comment has been rejected by the D.C. Circuit Court of Appeals. See *Int’l Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 632 n.51 (D.C. Cir. 1973).

Finally, as previously mentioned, EPA’s approval of South Carolina’s December 13, 2007, infrastructure submission does not make any substantive revision that could result in any change in emissions, so there is no further “analysis” beyond whether the state has adequate provisions in its SIP to address the infrastructure requirements for the 1997 8-hour ozone NAAQS. EPA’s March 17, 2011, proposed rulemaking goes through each of the relevant infrastructure requirements and provides detailed information on how South Carolina’s SIP addresses the relevant infrastructure requirements. Beyond making a general statement indicating that South Carolina’s submission is not in compliance with section 110(l) of the CAA, the Commenter does not provide comments on EPA’s detailed analysis of each infrastructure requirement to indicate that South Carolina’s infrastructure submission for the 1997 8-hour ozone NAAQS is deficient in meeting these individual requirements. Therefore, the Commenter has not provided a basis to question the Agency’s determination that South Carolina’s December 13, 2007, infrastructure submission meets the requirements for the infrastructure submission for the 1997 8-hour ozone NAAQS, including section 110(l) of the CAA.

Comment 4: Under the header “No Clean Air Act Section 110(l) analysis,” the Commenter further asserts that “EPA’s analysis must conclude that this proposed action would [violate] § 110(l) if finalized.” An example given by the Commenter is as follows: “For example, a 42 U.S.C. 7502(a)(2)(J) public notification program based on a 85 [parts per billion (ppb)] ozone level interferes with a public notification program that should exist for a 75 ppb ozone level. At its worst, the public notification system would be notifying people that the air is safe when in reality, based on the latest science, the air is not safe. Thus, EPA would be condoning the states providing

information that can physical[ly] hurt people.”

Response 4: EPA disagrees with the Commenter’s statement that EPA’s analysis must conclude that this proposed action would be in violation of section 110(l) if finalized. As mentioned above, South Carolina’s December 13, 2007, infrastructure submission does not revise or remove any existing emissions limit for any NAAQS, nor does it make any substantive revision that could result in any change in emissions. EPA has concluded that South Carolina’s December 13, 2007, infrastructure submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of South Carolina’s December 13, 2007, infrastructure submission will not interfere with attainment or maintenance of any NAAQS. See Response 2 and Response 3 above for a more detailed discussion.

EPA also disagrees with the specific example provided by the Commenter that the section 110(a)(2)(J) requirement for public notification for the 1997 8-hour ozone NAAQS based on 85 ppb interferes with a public notification program that should exist for a 75 ppb ozone level, and “EPA would be condoning the states providing information that can physical[ly] hurt people.” As noted in Response 1, South Carolina’s December 13, 2007, infrastructure submission was provided to address the 1997 8-hour ozone NAAQS and was submitted prior to EPA’s promulgation of the 2008 8-hour ozone in March 2008. Thus, South Carolina provided sufficient information at that time to meet the requirement for the 1997 8-hour ozone NAAQS which is the subject of this action.

Finally, members of the public do get information related to the more recent NAAQS via the Air Quality Index (AQI) for ozone. When EPA promulgated the 2008 NAAQS (73 FR 16436, March 27, 2008) EPA revised the AQI for ozone to show that at the level of the 2008 ozone NAAQS the AQI is set to 100, which indicates unhealthful ozone levels. It is this revised AQI that EPA uses to both forecast ozone levels and to provide notice to the public of current air quality. The EPA AIRNOW system uses the revised AQI as its basis for ozone. In addition, when South Carolina forecasts ozone and provides real-time ozone information to the public, either through the AIRNOW system or through its own Internet based system, the State uses the revised ozone AQI keyed to the 2008 revised ozone NAAQS. EPA believes this should address the Commenter’s legitimate assertion.

Comment 5: Under the header “No Clean Air Act Section 110(l) analysis,” the Commenter asserts that “if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes, this interferes with the requirement that PSD programs require sources to demonstrate that they will not cause or contribute to a violation of a NAAQS because this requirement includes the current 75 ppb ozone NAAQS.”

Response 5: EPA believes that this comment gives no basis for concluding that approval of the South Carolina infrastructure SIP violates the requirements of section 110(l). EPA assumes that the comment refers to the requirement that owners and operators of sources subject to PSD demonstrate that the allowable emissions from the proposed source or emission increases from a proposed modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to a violation of any NAAQS. 40 CFR 51.166(k)(1).

EPA further assumes that the Commenter’s statement “if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes” refers to a hypothetical SIP-approved PSD program that only requires owners and operators of sources subject to PSD to make the demonstration discussed above for the 1997 ozone NAAQS, and not for the 2008 ozone NAAQS. However, the Commenter gives no indication that South Carolina’s SIP-approved PSD program suffers from this alleged defect. EPA has examined the relevant provision in South Carolina’s SIP, Regulation 62.5, Standard No. 7(k)—*Prevention of Significant Deterioration, Source Impact Analysis*, and has determined that the language is nearly identical to that in 51.166(k)(1), and thus satisfies the requirements of this Federal provision.

Furthermore, as previously discussed in detail above, the infrastructure SIP makes no substantive change to any provision of South Carolina’s SIP-approved PSD program, and therefore does not violate the requirements of section 110(l). Had South Carolina submitted a SIP revision that substantively modified its PSD program to limit the required demonstration to just the 1997 ozone NAAQS, then the comment might have been relevant to a 110(l) analysis of that hypothetical SIP revision. However, in this case, the comment gives no basis for EPA to conclude that the South Carolina infrastructure SIP would interfere with any applicable requirement of the Act to protect any NAAQS for ozone.

EPA concludes that approval of South Carolina's December 13, 2007, infrastructure submission will not make the status quo air quality worse and is in fact consistent with the development of an overall plan capable of meeting the Act's requirements. Accordingly, when applying section 110(l) to this submission, EPA finds that approval of South Carolina's December 13, 2007, infrastructure submission is consistent with section 110 (including section 110(l)) of the CAA.

Comment 6: The Commenter provided comments opposing the proposed approval of the infrastructure submission because it did not identify a specific model to be used to demonstrate that a PSD source will not cause or contribute to a violation of the ozone NAAQS. Specifically, the commenter stated: "[t]he SIP submittals do not comply with Clean Air Act 110(a)(2)(f), (k), and (d)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source of modification will not cause or contribute to a violation [or] the ozone NAAQS."

The commenter asserted that because EPA does not require the use of a specific model, states use no modeling or use deficient modeling to evaluate these impacts. Specifically, the commenter alleged: "[m]any states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling (e.g. Kentucky using modeling from Georgia for the J.K. Smith proposed facility) is allowed."

To support the argument that EPA should designate a particular model and require states to use it, the Commenter attached and incorporated by reference a prior petition for rulemaking requesting that EPA designate such a model.¹⁹ The petition in question was submitted by Robert Ukeiley on behalf of the Sierra Club on July 28, 2010, requesting EPA to designate air quality models to use for PSD permit applications with regard to ozone and PM_{2.5}. As supporting documentation for that petition for rulemaking, the Commenter also resubmitted 15 attachments in the comment on EPA's proposed approval of the infrastructure submission. These attachments were as follows:

1. Exhibit 1: Comments from Camille Sears on the Ninth Conference on Air

Quality Modeling (Docket ID: EPA-HQ-OAR-2008-0604) (November 10, 2008);

2. Exhibit 2: "Response to Petitions for Review, Supplemental Briefs, and Amicus Brief" regarding the Desert Rock Energy Company, LLC from Ann Lyons, EPA Region 9—Office of Regional Counsel and Brian L. Doster/Elliott Zenick, EPA Headquarters—Office of General Counsel (January 8, 2009);

3. Exhibit 3: Report, The Kentucky Natural Resources and Environmental Protection Cabinet, A Cumulative Assessment of the Environmental Impacts Caused by Kentucky Electric Generating Units, (December 17, 2001);

4. Exhibit 4: Letter from Richard A. Wayland, Director of the Air Quality Assessment Division, EPA Office Air Quality and Planning Standards to Robert Ukeiley regarding Mr. Ukeiley's Freedom of Information Act (FOIA) request on behalf of the Sierra Club for documents related to EPA development of a modeling protocol for PM_{2.5} (October 1, 2008);

5. Exhibit 5: Expert Report of Lyle R. Chinkin and Neil J. M. Wheeler, Analysis of Air Quality Impacts, prepared for Civil Action No. IP99-1693 C-M/S *United States v. Cinergy Corp.*, (August 28, 2008);

6. Exhibit 6: Illinois Environmental Protection Agency, Bureau of Air, Assessing the impact on the St. Louis Ozone Attainment Demonstration from the proposed electrical generating units in Illinois" (September 25, 2003);

7. Exhibit 7: Memorandum from Stephen D. Page, Director, EPA Office Air Quality and Planning Standards entitled, "Modeling Procedures for Demonstrating Compliance with the PM_{2.5} NAAQS" (March 23, 2010);

8. Exhibit 8: E-mail from Scott B. (Title and Affiliation not provided), to Donna Lucchese, (Title and Affiliation not provided), entitled, "Ozone impact of point source" (Date described as "Early 2000");

9. Exhibit 9: E-mail from Mary Portanova, EPA, Region 5, to Noreen Weimer, EPA, Region 5, entitled "FOIA—Robert Ukeiley—RIN-02114-09" (October 20, 2009, 10:05 CST);

10. Exhibit 10: Synopsis from PSD Modeling Workgroup—EPA/State/Local Workshop, New Orleans (May 17, 2005);

11. Exhibit 11: Letter from Carl E. Edlund, P.E., Director, EPA, Region 6 Multimedia Planning and Permitting Division to Richard Hyde, P.E. Deputy Director of the Office of Permitting and Registration, Texas Commission on Environmental Quality regarding "White Stallion Energy Center, PSD Permit Nos. PSD-TX-1160, PAL 26, and HAP 28" (February 10, 2010);

12. Exhibit 12: Memorandum from John S. Seitz, Director, EPA Office of Air Quality Planning & Standards entitled, "Interim Implementation of New Source Review Requirements for PM_{2.5}" (October 23, 1997);

13. Exhibit 13: Presentation by Erik Snyder and Bret Anderson (Titles and Affiliations not provided), to R/S/L Workshop, Single Source Ozone/PM_{2.5} Impacts in Regional Scale Modeling & Alternate Methods, (May 18, 2005);

14. Exhibit 14: Letter from Richard D. Scheffe, PhD, Senior Science Advisor, EPA, Office of Air Quality Planning & Standards to Abigail Dillen in response to an inquiry regarding the applicability of the Scheffe Point Source Screening Tables (July 28, 2000);

15. Exhibit 15: Presentation by Gail Tonnesen, Zion Wang, Mohammad Omary, Chao-Jung Chien (University of California, Riverside); Zac Adelman (University of North Carolina); Ralph Morris et al. (ENVIRON Corporation Int., Novato, CA) to the Ozone MPE, TAF Meeting, Review of Ozone Performance in WRAP Modeling and Relevance to Future Regional Ozone Planning, (July 30, 2008).

Finally, the Commenter then stated that "EPA has issued guidance suggesting [that] PSD sources should use the ozone limiting method for NO_x modeling." The Commenter referred to EPA's March 2011 NO_x modeling guidance to support this position.²⁰ The Commenter then asserts that this "ozone modeling" helps sources demonstrate compliance and that sources should also do ozone modeling that may inhibit a source's permission to pollute. The Commenter argued that EPA's guidance supports the view that EPA must require states to require a specific model in their SIPs to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS.

Response 6: EPA disagrees with the Commenter's views concerning modeling in the context of acting upon the infrastructure submission. The Commenter raised four primary interrelated arguments: (1) The state's infrastructure SIP must specify a required model; (2) the failure to specify a model leads to inadequate analysis; (3) the attached petition for rulemaking explains why EPA should require states to specify a model; and (4) a recent guidance document concerning modeling for NO_x sources recommends

¹⁹ The Commenter attached the July 28, 2010, "Petition for Rulemaking to Designate Air Quality Models to use for PSD Permit Applications with Regard to Ozone and PM_{2.5}," from Robert Ukeiley on behalf of the Sierra Club.

²⁰ The Commenter attached an EPA memorandum dated March 1, 2011: "Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO₂ National Ambient Air Quality Standard," from Tyler Fox, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards.

using ozone limit methods for NO_x sources and EPA could issue comparable guidance for modeling ozone from a single source.

At the outset, EPA notes that although the Commenter sought to incorporate by reference the prior petition for rulemaking requesting EPA to designate a particular model for use by states for this purpose, the Agency is not required to respond to that petition in the context of acting upon the infrastructure submission. In reviewing the infrastructure submission, EPA is evaluating the state's submission in light of current statutory and regulatory requirements, not in light of potential future requirements that EPA has been requested to establish in a petition. Moreover, the petition arose in a different context, requests different relief, and raises other issues unrelated to those concerning ozone modeling raised by the Commenter in this action. EPA believes that the appropriate place to respond to the issues raised in the petition is in a petition response. Accordingly, EPA is not responding to the July 28, 2010 petition in this action. The issues raised in that petition are under separate consideration.

EPA believes that the comment concerning the approvability of the infrastructure submission based upon whether the state's SIP specifies the use of a particular model are germane to this action, but EPA disagrees with the Commenter's conclusions. The Commenter stated that the SIP submittals "do not comply with Clean Air Act 110(a)(2)(J), (K), and (D)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source [or] modification will not cause or contribute to a violation of the ozone NAAQS." EPA's PSD permitting regulations are found at 40 CFR 51.166 and 52.21. PSD requirements for SIPs are found in 40 CFR 51.166. Similar PSD requirements for SIPs that have been disapproved with respect to PSD and for SIPs incorporating EPA's regulations by reference are found in 40 CFR 52.21. The PSD regulations require an ambient impact analysis for ozone for proposed major stationary sources and major modifications to obtain a PSD permit (40 CFR 51.166 (b)(23)(i), (i)(5)(i)(f) ²¹, (k), (l) and (m) and 40 CFR 52.21

(b)(23)(i), (i)(5)(i)(f) ²², (k), (l) and (m)). The regulations at 40 CFR 51.166(l) state that for air quality models the SIP shall provide for procedures which specify that:

(1) All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in Appendix W of this part (Guideline on Air Quality Models).

(2) Where an air quality model specified in Appendix W of this part (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102.

These parts of 40 CFR Part 51 and 52 are the umbrella SIP components that states have either adopted by reference or have been approved by the states and delegated authority to incorporate the PSD requirements of the CAA. As discussed above, these CFR part 51 and 52 PSD provisions refer to 40 CFR Part 51, Appendix W for the appropriate model to utilize for the ambient impact assessment. 40 CFR Part 51, Appendix W is the Guideline on Air Quality models and Section 1.0.a. states:

The *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source review (NSR), including prevention of significant deterioration (PSD). {footnotes not included} Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies, and by industry. * * * The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when support by sound scientific judgment.

Appendix W Section 5.2.1. includes the *Guideline* recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Specifically, Section 5.2.1.c. states: "Estimating the Impact of Individual Sources. Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable

approach on a case-by-case basis (subsection 3.2.2)."

Appendix W Section 5.2.1.c. provides that the model users (state and local permitting authorities and permitting applicants) should work with the appropriate EPA Regional Office on a case-by-case basis to determine an adequate method for performing an air quality analysis for assessing ozone impacts. Due to the complexity of modeling ozone and the dependency on the regional characteristics of atmospheric conditions, EPA believes this is an appropriate approach rather than specifying one particular preferred model nationwide, which may not be appropriate in all circumstances. Instead, the choice of method "depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office * * *". Appendix W Section 5.2.1.c. Therefore, EPA continues to believe it is appropriate for permitting authorities to consult and work with EPA Regional Offices as described in Appendix W, including section 3.0.b and c, 3.2.2, and 3.3, to determine the appropriate approach to assess ozone impacts for each PSD required evaluation.^{23 24 25 26}

²³ 40 CFR part 51 Appendix W, Section 3.0.b. states: "In this guidance, when approval is required for a particular modeling technique or analytical procedure, we often refer to the 'appropriate reviewing authority'. In some EPA regions, authority for NSR and PSD permitting and related activities have been delegated to State and even local agencies. In these cases, such agencies are 'representatives' of the respective regions. Even in these circumstances, the Regional Office retains authority in decisions and approvals. Therefore, as discussed above and depending on the circumstances, the appropriate reviewing authority may be the Regional Office, Federal Land Manager(s), State agency(ies), or perhaps local agency(ies). In cases where review and approval comes solely from the Regional Office (sometimes stated as 'Regional Administrator'), this will be stipulated. If there is any question as to the appropriate reviewing authority, you should contact the Regional modeling contact (<http://www.epa.gov/scram001/tt28.htm#regionalmodelingcontacts>) in the appropriate EPA Regional Office, whose jurisdiction generally includes the physical location of the source in question and its expected impacts."

²⁴ 40 CFR Part 51 Appendix W, Section 3.0.c. states: "In all regulatory analyses, especially if other-than-preferred models are selected for use, early discussions among Regional Office staff, State and local control agencies, industry representatives, and where appropriate, the Federal Land Manager, are invaluable and encouraged. Agreement on the data base(s) to be used, modeling techniques to be applied and the overall technical approach, prior to the actual analyses, helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The use of an air quality analysis checklist, such as is posted on EPA's Internet SCRAM Web site (subsection 2.3), and the preparation of a written protocol help to keep misunderstandings at a minimum."

²⁵ 40 CFR part 51 Appendix W, Section 3.2.2.a. states: "Determination of acceptability of a model is a Regional Office responsibility. Where the

²¹ Citation includes a footnote: "No de minimis air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data."

²² *Id.*

Although EPA has not selected one particular preferred model in Appendix A to Appendix W (Summaries of Preferred Air Quality Models) for conducting ozone impact analyses for individual sources, state/local permitting authorities must comply with the appropriate PSD FIP or SIP requirements with respect to ozone.

The current SIP meets the requirements of 40 CFR 51.166(l)(1). Specifically, the South Carolina SIP states at Regulation 62.5, Standard No. 7(l)—*Air Quality Models*,

(1) All estimates of ambient concentrations required under this paragraph shall be based on applicable air quality models, data bases, and other requirements specified in 40 CFR part 51 appendix W (Guideline on Air Quality Models).

(2) Where an air quality model specified in 40 CFR part 51 appendix W (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Department must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q).

This statement in the federally approved South Carolina SIP is a direct reference to EPA's Guideline on Air Quality Models²⁶; 40 CFR Part 51, Appendix W. The commitment in South Carolina's SIP to implement and adopt air quality models utilizing 40 CFR Part 51, Appendix W as a basis is appropriate and consistent with Federal regulations.

Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the recommendations of this subsection. This finding will normally result from a determination that (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or analytical procedure is available and applicable."

²⁶ 40 CFR Part 51 Appendix W Section 3.3.a. states: "The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness and consistency in modeling decisions is fostered among the various Regional Offices and the States. To satisfy that need, EPA established the Model Clearinghouse and also holds periodic workshops with headquarters, Regional Office, State, and local agency modeling representatives. 3.3.b. states: "The Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the Regional Office may request assistance from the Model Clearinghouse after an initial evaluation and decision has been reached concerning the application of a model, analytical technique or data base in a particular regulatory action." (footnote omitted).

South Carolina requires that PSD permit applications contain an analysis of ozone impacts from the proposed project. As recommended by Appendix W, the methods used for the ozone impacts analysis for individual PSD permit actions are determined on a case-by-case basis. South Carolina consults with EPA Region 4 on a case-by-case basis for evaluating the adequacy of the ozone impact analysis. When appropriate, EPA Region 4 provides input/comments on the analysis. As stated in Section 5.2.1.c. of Appendix W, "[c]hoice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions." Therefore, based on an evaluation of the source, its emissions and background ozone concentrations, an ozone impact analysis other than modeling may be required. While in other cases a complex photochemical grid type modeling analysis, as discussed below, may be warranted. As noted, the appropriate methods are determined in consultation with EPA Region 4 on a case-by-case basis.

As a second point, the Commenter asserted that states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling is allowed.

EPA agrees that States should not be using inappropriate analytical tools in this context. For example, the Commenter's Exhibit 14 does discuss the inappropriateness of using a screening technique referred to as the "Scheffe Tables." The Commenter is correct that the use of "Scheffe Tables" and other particular screening techniques, which involve ratios of nitrogen oxides (NO_x) to volatile organic compounds (VOC) that do not consider the impact of biogenic emissions, or that use other outdated or irrelevant modeling, is inappropriate to evaluate a single source's ozone impacts on an air quality control region. More scientifically appropriate screening and refined tools are available and should be considered for use. Therefore, EPA continues to believe States should consult and work with EPA Regional Offices as described in Appendix W on a case-by-case basis to determine the appropriate method for estimating the impacts of these ozone precursors from individual sources.

For ozone, a proposed emission source's impacts are dependent upon local meteorology and pollution levels in the surrounding atmosphere. Ozone is formed from chemical reactions in the atmosphere. The impact a new or modified source can have on ozone

levels is dependent, in part, upon the existing atmospheric pollutant loading already in the region with which emissions from the new or modified source can react. In addition, meteorological parameters such as wind speed, temperature, wind direction, solar radiation influx, and atmospheric stability are also important factors. The more sophisticated analyses consider meteorology and interactions with emissions from surrounding sources. EPA has not identified an established modeling system that would fit all situations and take into account all of the additional local information about sources and meteorological conditions. The Commenter submitted a number of exhibits (including Exhibits 10, 11, and 13) in which EPA has previously indicated a preference for using a photochemical grid model when appropriate modeling databases exist and when it is acceptable to use the photochemical grid modeling to assess a specific source.

Commenter's Exhibit 13 includes a list of issues to evaluate, which aid in considering if the existing photochemical grid modeling databases are acceptable, and discusses the need for permitting authorities to consult with the EPA Regional Office in determining if photochemical grid modeling would be appropriate for conducting an ozone impacts analysis. In these documents EPA has indicated that photochemical grid modeling (e.g., CAMx or CMAQ) is generally the most sophisticated type of modeling analysis for evaluating ozone impacts, and it is usually conducted by adding a source into an existing modeling system to determine the change in impact from the source. The analysis is done by comparing the photochemical grid modeling results which include the new or modified source under evaluation with the results from the original modeling analysis that does not contain the source. Photochemical grid modeling is often an excellent modeling exercise for evaluating a single source's impacts on an air quality control region when such models are available and appropriate to utilize because they take into account the important parameters and the models have been used in regional modeling for attainment SIPs.

The use of reactive plume models may also be appropriate under certain circumstances. EPA has approved the use of plume models in some instances, but these models are not always appropriate because of the difficulty in obtaining the background information to make an appropriate assessment of the photochemistry and meteorology impacts.

EPA has not selected a specific “preferred” model for conducting an ozone impact analysis. Model selection normally depends upon the details about the modeling systems available and if they are appropriate for assessing the impacts from a proposed new source or modification. Considering that a photochemical modeling system with inputs, including meteorological and emissions data, that would also have to be evaluated for model performance, could potentially be costly and time consuming to develop, EPA has taken a case-by-case evaluation approach. Such photochemical modeling databases are typically developed so that impacts of regulatory actions across multiple sources can be evaluated, and therefore the time and financial costs can be absorbed by the regulatory body. It is these types of databases that have the potential to be used to assess single source ozone impacts after they have been developed as part of a regional modeling demonstration to support a SIP. From a cost and time requirement standpoint, EPA would generally not expect a single source to develop an entire photochemical modeling system just to evaluate its individual impacts on an air quality region, as long as other methods of analyzing ozone impacts are available and acceptable to EPA.

When an existing photochemical modeling system is deemed appropriate, it is an excellent tool to evaluate the ozone impact that a single source's emissions can have on an air quality region in the context of PSD modeling and should be evaluated for potential use. More often now than 10 or 15 years ago, a photochemical modeling system may be available that covers the geographic area of concern. EPA notes that even where photochemical modeling is readily available, it should be evaluated as part of the development of a modeling protocol, in consultation with the Regional Office to determine its appropriateness for conducting an impact analysis for a particular proposed source or modification.²⁷ Factors to consider when evaluating the appropriateness of a particular photochemical modeling system include, but are not limited to, meteorology, year of emissions projections, model performance issues in the area of concern or in areas that might impact projections in the area of concern. Therefore, even where photochemical modeling systems exist, there may be circumstances where their use is inappropriate for estimating the ozone impacts of a proposed source or

modification. Because of these scientific issues and the need for appropriate case-by-case technical considerations, EPA has not designated a single “Preferred Model” for conducting single source impact analyses for ozone in Appendix A of Appendix W.

In summary, the Commenter states that many States abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling is allowed. For the reasons described in this response to comment, we do not believe that one modeling system is presently appropriate to designate for all situations, yet that does not relieve proposed sources and modifications from the obligation of making the required demonstration under the applicable PSD rules. The South Carolina SIP contains a direct reference for use of the procedures specified in EPA's “Guideline on Air Quality Models” (40 CFR part 51 Appendix W) for estimating ambient concentrations of criteria pollutants, including ozone (Regulation 62.5, Standard No. 7(l)—*Air Quality Models*). As such, South Carolina requires that PSD permit applications contain an analysis of ozone impacts from the proposed project. As recommended by Appendix W, the methods used for the ozone impacts analysis are determined on a case-by-case basis. South Carolina consults with EPA Region 4 on a case-by-case basis for evaluating the adequacy of the ozone impact analysis. When appropriate, EPA Region 4 provides input/comments on the analysis. Because EPA has not designated one particular model as being appropriate in all situations for evaluating single source ozone impacts, EPA Region 4 concurs with Alabama's proposed approach.

In conclusion, for the reasons stated above it is difficult to identify and implement a standardized national model for ozone. EPA has had a standard approach in its PSD SIP and FIP rules of not mandating the use of a particular model for all circumstances, instead treating the choice of a particular method for analyzing ozone impacts as circumstance-dependent. EPA then determines whether the State's implementation plan revision submittal meets the PSD SIP requirements. For purposes of review for this infrastructure SIP, South Carolina has an EPA-approved PSD SIP that meets the EPA PSD SIP requirements.

Finally, the Commenter argued that EPA's March 2011 guidance concerning modeling for the 1-hour nitrogen

dioxide (NO₂) NAAQS demonstrates that similar single source modeling could be conducted for sources for purposes of the ozone NAAQS. Specifically, the commenter argued that the model used for other criteria pollutants (AERMOD), incorporates ozone chemistry for modeling NO₂ and therefore is modeling ozone chemistry for a single source. The Commenter stated that this guidance suggested that PSD sources should use the ozone limiting method for NO_x modeling²⁸. Further, the Commenter noted that this technique “* * * is modeling of ozone chemistry for a single source” and therefore that that this modeling with ozone chemistry allows a source to be permitted. The commenter concludes with the assertion that EPA must require the SIPs to include a model to use to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS.

EPA's recent March 2011 guidance for the NO₂ NAAQS does discuss using two different techniques to estimate the amount of conversion of NO_x emissions to NO₂ ambient NO₂ concentrations as part of the NO₂ modeling guidance. NO_x emissions are composed of NO and NO₂ molecules. These two techniques which have been available for years, are the Ozone Limiting Method (OLM), which was mentioned by the Commenter, and the Plume Volume Molar-Ratio-Method (PVMRM). Both of these techniques are designed and formulated based on the principle of assuming available atmospheric ozone mixes with NO/NO₂ emissions from sources. This “mixing” results in ozone molecules reacting with the NO molecules to form NO₂ and O₂. This is a simple one-direction chemical reaction that is used to determine how much NO is converted to NO₂ for modeling of the NO₂ standard. Thus, these techniques do not predict ozone concentrations, rather they take ambient ozone data as model inputs to determine the calculation of NO conversion to NO₂. These techniques are not designed to calculate the amount of ozone that might be generated as the NO_x emissions traverses downwind of the source and potentially reacts with other pollutants in the atmosphere. Rather, these two techniques rely on a one-way calculation based on an ozone molecule (O₃) reacting with an NO molecule to

²⁸ The Commenter attached EPA memorandum dated March 1, 2011: “Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-Hour NO₂ National Ambient Air Quality Standard”, from Tyler Fox, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards.

²⁷ 40 CFR part 51 Appendix W, Sections 3.0, 3.2., 3.3, 5.2.1.c and commenter Exhibit 13.

generate an NO₂ molecule and an O₂ molecule.^{29 30}

As previously mentioned, these two techniques do not attempt to estimate the amount of ozone that might be generated, and the models in which these techniques are applied are not designed or formulated to even account for the potential generation of ozone from emissions of NO/NO₂. Ozone chemistry has many cycles of destruction and generation and is dependent upon a large number of variables, including VOC concentrations and the specific types of VOC molecules present, other atmospheric pollutant concentrations, meteorological conditions, and solar radiation levels as already discussed in this response. Since OLM and PVMRM do not include any of these scientific principles and do not account for any chemical mechanisms that would generate ozone, these techniques cannot be used for determining potential changes in ozone levels from a proposed source or modification.

In summary, the Commenter asserts that the OLM technique models of ozone chemistry for a single source and that this modeling helps a source demonstrate compliance with the NO₂ standard. The Commenter is concerned that EPA has not designated a single specific OLM technique is not also used to determine ozone impacts and believes that EPA should rectify this concern. To do so the Commenter concludes that EPA must require the SIPs to include a model to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS. As previously discussed, EPA disagrees and reiterates that the OLM (and PVMRM) are simple chemistry techniques that are not formulated to be capable to determine potential ozone impacts from a proposed source or modification.

For the reasons discussed above, EPA does not believe that the comments provide a basis for not approving the infrastructure submission. In short, EPA has not modified the Guidelines in Appendix W for ozone impacts analysis for a single source (Appendix W Part 5.2.1.c.) to require use of a specific model as the Commenter requests. EPA finds that the State has the appropriate regulations to operate the PSD program consistent with federal requirements. Furthermore, we disagree that states are

required to designate a specific model in the SIP, because App. W states that state and local agencies should consult with EPA on a case-by-case basis to determine what analysis to require.

V. Final Action

As described above, SC DHEC has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in South Carolina. EPA is taking final action to approve South Carolina's December 13, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 1997 8-hour ozone infrastructure rulemaking South Carolina does not have tribal implications as specified by Executive Order 13175 (65 FR 67,249, November 9, 2000), because the determination does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the Rock Hill, South Carolina (York County) portion of the bi-state Charlotte nonattainment area. EPA notes that the proposal for this rule incorrectly stated that the South Carolina SIP is not approved to apply in Indian country located in the state. While this statement is generally true with regard to Indian country throughout the United States, for purposes of the Catawba Indian Nation Reservation in Rock Hill, South Carolina, the SIP does apply within the Reservation. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities." However, because today's action will not result in any direct effects on the Catawba, EPA's initial assessment that Executive Order 13175 does not apply remains valid. Furthermore, EPA notes today's action also will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

²⁹ "AERMOD: Model Formulation Document", http://www.epa.gov/scram001/7thconf/aermod/aermod_mfd_addm_rev.pdf.

³⁰ Hanrahan, P.L., 1999a. "The plume volume molar ratio method for determining NO₂/NO_x ratios in modeling. Part I: Methodology," J. Air & Waste Manage. Assoc., 49, 1324-1331.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 30, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart PP—South Carolina

■ 2. Section 52.2120(e), is amended by adding a new entry “South Carolina 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards” at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

Provision	State effective date	EPA approval date	Explanation
* * *	* * *	* * *	* * *
South Carolina 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	12/13/2007	07/13/2011 [Insert citation of publication].	For the 1997 8-hour ozone NAAQS.

[FR Doc. 2011–17469 Filed 7–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0722–201125 FRL–9436–6]

Approval and Promulgation of Implementation Plans; Mississippi; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the December 7, 2007, submission by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ) as demonstrating that the State meets the implementation plan (SIP) requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. Mississippi certified that the Mississippi SIP contains provisions that ensure the 1997

8-hour ozone NAAQS is implemented, enforced, and maintained in Mississippi (hereafter referred to as “infrastructure submission”). Mississippi’s infrastructure submission, provided to EPA on December 7, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS. Additionally, EPA is responding to adverse comments received on EPA’s March 17, 2011, proposed approval of Mississippi’s December 7, 2007, infrastructure submission.

DATES: *Effective Date:* This rule will be effective August 12, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0722. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR**

FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations, thus states were required to provide submissions to address sections 110(a)(1) and (2) of the CAA for this new NAAQS. Mississippi provided its infrastructure submission for the 1997 8-hour ozone NAAQS on

December 7, 2007. On March 17, 2011, EPA proposed to approve Mississippi's December 7, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS. See 76 FR 14631. A summary of the background for today's final action is provided below. See EPA's March 17, 2011, proposed rulemaking at 76 FR 14631 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below ¹ and in EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under

Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards."

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.²
- 110(a)(2)(D): Interstate transport.³
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁴
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM_{2.5} NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.⁵ The Commenters

specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction ("SSM") at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emission limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA. EPA notes that there are two other substantive issues for which EPA likewise stated that it would respond separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP-approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any

² This rulemaking only addresses requirements for this element as they relate to attainment areas.

³ Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Mississippi consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. See *North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Mississippi's SIP revision, which was submitted to comply with CAIR. See 72 FR 56268 (October 3, 2007). In so doing, Mississippi's CAIR SIP revision addressed the interstate transport provisions in Section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has since proposed a new rule to address the interstate transport of NO_x and SO_x in the eastern United States. See 75 FR 45210 (Aug. 2, 2010) ("the Transport Rule"). However, because this rule has yet to be finalized, EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

⁴ This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," but as previously discussed is not relevant to today's final rulemaking.

⁵ See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket #EPA-

¹ Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Mississippi's SIP addresses 110(a)(2)(C).

R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

existing State provisions with regard to excess emissions during SSM of operations at facilities.” EPA further explained, for informational purposes, that “EPA plans to address such State regulations in the future.” EPA made similar statements, for similar reasons, with respect to the director’s discretion, minor source NSR, and NSR Reform issues. EPA’s objective was to make clear that approval of an infrastructure SIP for these ozone and PM_{2.5} NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA’s intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA’s intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA’s statements, however, we want to explain more fully the Agency’s reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)” and that these SIPs are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must meet. EPA has

historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as “infrastructure SIPs.” This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other requirements, such as “nonattainment SIP” submissions required to address the nonattainment planning requirements of part D, “regional haze SIP” submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.⁶ Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.⁷

⁶ For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

⁷ For example, section 110(a)(2)(D)(i) requires EPA to ensure that each state’s SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See, e.g.*, “Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule,” 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase “contribute significantly to nonattainment”).

Notwithstanding that section 110(a)(2) states that “each” SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).⁸ This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general “infrastructure SIP” for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter “interstate transport” provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.⁹ This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state’s SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.¹⁰

⁸ *See, e.g., id.*, 70 FR 25162, at 25163–25165 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

⁹ EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM_{2.5} NAAQS. *See*, “Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

¹⁰ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of

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Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C (*i.e.*, the PSD requirement applicable in attainment areas). Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements “as applicable.” In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.¹¹ Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the “infrastructure” elements for

SIPs, which it further described as the “basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.”¹² As further identification of these basic structural SIP requirements, “attachment A” to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended “to constitute an interpretation of” the requirements, and was merely a “brief description of the required elements.”¹³ EPA also stated its belief that with one exception, these requirements were “relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.”¹⁴ For the one exception to that general assumption—how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS—EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM_{2.5} NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State’s submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State’s SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director’s discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director’s discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states

that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA’s 2007 Guidance merely indicated its belief a state’s submission should establish that the state has the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA’s proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read sections 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP for purposes of assuring that the State in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA’s 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of sections 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the

new monitors to measure ambient levels of that new indicator species for the new NAAQS.

¹¹ See, “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the “2007 Guidance”). EPA issued comparable guidance for the 2006 PM_{2.5} NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),” from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the “2009 Guidance”).

¹² 2007 Guidance at page 2.

¹³ *Id.*, at attachment A, page 1.

¹⁴ *Id.*, at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA’s approach to some substantive issues indicates that the statute is not so “self explanatory,” and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a “SIP call” whenever the Agency determines that a state’s SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.¹⁵ Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹⁶ Significantly, EPA’s determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency’s subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director’s discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.¹⁷

III. This Action

EPA is taking final action to approve Mississippi’s infrastructure submission as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS

promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. Mississippi, through MDEQ, certified that the Mississippi SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Mississippi.

Mississippi’s infrastructure submission, provided to EPA on December 7, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS. EPA has determined that Mississippi’s December 7, 2007, infrastructure submission is consistent with section 110 of the CAA. Additionally, EPA is responding to adverse comments received on EPA’s March 17, 2011, proposed approval of Mississippi’s December 7, 2007, infrastructure submission. The responses to comments are found in Section IV below.

IV. EPA’s Response to Comments

EPA received one set of comments on the March 17, 2011, proposed rulemaking to approve Mississippi’s December 7, 2007, infrastructure submission as meeting the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Generally, the Commenter’s concerns relate to whether EPA’s approval of Mississippi’s December 7, 2007, infrastructure submission is in compliance with section 110(l) of the CAA, and whether EPA’s approval will interfere with the State’s compliance with the CAA’s prevention of significant deterioration (PSD) requirements. A full set of the comments provided on behalf of the Kentucky Environmental Foundation (hereinafter referred to as “the Commenter”) is provided in the docket for today’s final action. A summary of the comments and EPA’s responses are provided below.

Comment 1: Under the header “No Clean Air Act Section 110(l) analysis,” the Commenter states, “Before providing the technical analysis for why finalizing this proposed rule would be contrary to the Clean Air Act, I wish to point out that it is 2011 and EPA has yet to ensure that these areas have plans to meet the 1997 National Ambient Air Quality Standard (NAAQS) for ozone.” The Commenter goes on to state that “EPA acknowledged that the science indicates that the 1997 NAAQS, which is effectively 85 parts per billion (ppb), does not protect people’s health or welfare when in 2008, EPA set a new ozone NAAQS at 75 ppb.”

Response 1: As noted in EPA’s proposed rulemaking on Mississippi’s December 7, 2007, infrastructure submission and in today’s final

rulemaking, the very action that EPA is undertaking is a determination that Mississippi has a plan to ensure compliance with the 1997 8-hour ozone NAAQS. Mississippi’s submission was provided on December 7, 2007, for the 1997 8-hour ozone NAAQS, thus the State’s submission predates the release of the revision to the 8-hour ozone NAAQS on March 12, 2008, and is distinct from any plan that Mississippi would have to provide to ensure compliance of the 2008 NAAQS. This action is meant to address, and EPA is approving, the 1997 ozone infrastructure requirements under section 110 of the Act. In today’s action EPA is not addressing the 110 infrastructure requirements for the 2008 ozone NAAQS as they will be addressed in a separate rulemaking.

EPA notes that the 1997 8-hour ozone standard as published in a July 18, 1997, final rulemaking notice (62 FR 38856) and effective September 18, 1997, are 0.08 parts per million (ppm), which is effectively 0.084 ppm or 84 ppb due to the rounding convention and not “effectively 85 parts per billion (ppb)” as the Commenter stated. Further, EPA agrees that the Agency has made the determination that the 1997 8-hour ozone NAAQS is not as protective as needed for public health and welfare, and as the Commenter mentioned, the Agency established a new ozone NAAQS at 75 ppb. However, the Agency is currently reconsidering the 2008 8-hour ozone NAAQS, and has not yet designated areas for any subsequent NAAQS.

Finally, while it is not clear which areas the Commenter refers to in stating “EPA has yet to ensure these areas have plans to meet” the 1997 ozone NAAQS, EPA believes this concern is addressed by the requirements under section 172, Part D, Title I of the Act for states with nonattainment areas for the 1997 ozone NAAQS to submit nonattainment plans. As discussed in EPA’s notice proposing approval of the Mississippi infrastructure SIP, submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA are outside the scope of this action, as such plans are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172.¹⁸

¹⁸ There were no areas in Mississippi designated nonattainment for the 1997 8-hour ozone NAAQS. The entire state was designated Unclassifiable/Attainment. Currently, Mississippi has no areas violating the 1997 8-hour ozone NAAQS and the

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¹⁵ EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,” 74 FR 21639 (April 18, 2011).

¹⁶ EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,” 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

¹⁷ EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director’s discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director’s discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

Comment 2: Also under the header “No Clean Air Act Section 110(l) analysis,” the Commenter cites the section 110(l) CAA requirement, and states “Clean Air Act § 110(l) requires ‘EPA to evaluate whether the plan as revised will achieve the pollution reductions required under the Act, and the absence of exacerbation of the existing situation does not assure this result.’ *Hall v. EPA*, 273 F.3d 1146, 1152 (9th Cir. 2001).” The Commenter goes on to state that “* * * the **Federal Register** notices are devoid of any analysis of how these rule makings will or will not interfere with attaining, making reasonable further progress on attaining and maintaining the 75 ppb ozone NAAQS as well as the 1-hour 100 ppb nitrogen oxides NAAQS.”

Response 2: EPA agrees with the Commenter’s assertion that consideration of section 110(l) of the CAA is necessary for EPA’s action with regard to approving the State’s submission. However, EPA disagrees with the Commenter’s assertion that EPA did not consider 110(l) in terms of the March 17, 2011, proposed action. Further, EPA disagrees with the Commenter’s assertion that EPA’s proposed March 17, 2011, action does not comply with the requirements of section 110(l). Section 110(l) provides in part: “[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter.”

EPA has consistently interpreted section 110(l) as not requiring a new attainment demonstration for every SIP submission. The following actions are examples of where EPA has addressed 110(l) in previous rulemakings: 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). Mississippi’s December 7, 2007, infrastructure submission does not revise or remove any existing emissions limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone NAAQS. Simply put, it does not make any substantive revision that could result in any change in emissions. As a result, the submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of Mississippi’s December 7, 2007, infrastructure submission will not

interfere with attainment or maintenance of any NAAQS.

Comment 3: Under the header “No Clean Air Act Section 110(l) analysis,” the Commenter states that “We are not required to guess what EPA’s Clean Air Act 110(l) analysis would be. Rather, EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis.” Further, the Commenter states that “EPA cannot include its analysis in its response to comments and approve the actions without providing the public with an opportunity to comment on EPA’s Clean Air Act § 110(l) analysis.”

Response 3: Please see Response 2 for a more detailed explanation regarding EPA’s response to the Commenter’s assertion that EPA’s action is not in compliance with section 110(l) of the CAA. EPA does not agree with the Commenter’s assertion that EPA’s analysis did not consider section 110(l) and so therefore “EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis.” Every action that EPA takes to approve a SIP revision is subject to section 110(l) and thus EPA’s consideration of whether a state’s submission “would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter” is inherent in EPA’s action to approve or disapprove a submission from a state. In the “Proposed Action” section of the March 17, 2011, rulemaking, EPA notes that “EPA is proposing to approve Mississippi’s infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.” Section 110(l) is a component of section 110, so EPA believes that this provides sufficient notice that EPA considered section 110(l) for the proposed action and concluded that section 110(l) was not violated.

Further, EPA does not agree with the Commenter’s assertion that the Agency cannot provide additional clarification in response to a comment concerning section 110(l) and take a final approval action without “providing the public with an opportunity to comment on EPA’s Clean Air Act § 110(l) analysis.” Clearly such a broad proposition is incorrect where the final rule is a logical outgrowth of the proposed rule. In fact, the proposition that providing an analysis for the first time in response to a comment on a rulemaking per se violates the public’s opportunity to comment has been rejected by the DC

Circuit Court of Appeals. See *Int’l Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 632 n.51 (DC Cir. 1973).

Finally, as previously mentioned, EPA’s approval of Mississippi’s December 7, 2007, infrastructure submission does not make any substantive revision that could result in any change in emissions, so there is no further “analysis” beyond whether the state has adequate provisions in its SIP to address the infrastructure requirements for the 1997 8-hour ozone NAAQS. EPA’s March 17, 2011, proposed rulemaking goes through each of the relevant infrastructure requirements and provides detailed information on how Mississippi’s SIP addresses the relevant infrastructure requirements. Beyond making a general statement indicating that Mississippi’s submission is not in compliance with section 110(l) of the CAA, the Commenter does not provide comments on EPA’s detailed analysis of each infrastructure requirement to indicate that Mississippi’s infrastructure submission for the 1997 8-hour ozone NAAQS is deficient in meeting these individual requirements. Therefore, the Commenter has not provided a basis to question the Agency’s determination that Mississippi’s December 7, 2007, infrastructure submission meets the requirements for the infrastructure submission for the 1997 8-hour ozone NAAQS, including section 110(l) of the CAA.

Comment 4: Under the header “No Clean Air Act Section 110(l) analysis,” the Commenter further asserts that “EPA’s analysis must conclude that this proposed action would [violate] § 110(l) if finalized.” An example given by the Commenter is as follows: “For example, a 42 U.S.C. 7502(a)(2)(J) public notification program based on a 85 [parts per billion (ppb)] ozone level interferes with a public notification program that should exist for a 75 ppb ozone level. At its worst, the public notification system would be notifying people that the air is safe when in reality, based on the latest science, the air is not safe. Thus, EPA would be condoning the states providing information that can physical[ly] hurt people.”

Response 4: EPA disagrees with the Commenter’s statement that EPA’s analysis must conclude that this proposed action would be in violation of section 110(l) if finalized. As mentioned above, Mississippi’s December 7, 2007, infrastructure submission does not revise or remove any existing emissions limit for any NAAQS, nor does it make any substantive revision that could result in

State does not contain any nonattainment areas for this NAAQS.

any change in emissions. EPA has concluded that Mississippi's December 7, 2007, infrastructure submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of Mississippi's December 7, 2007, infrastructure submission will not interfere with attainment or maintenance of any NAAQS. See Response 2 and Response 3 above for a more detailed discussion.

EPA also disagrees with the specific example provided by the Commenter that the section 110(a)(2)(J) requirement for public notification for the 1997 8-hour ozone NAAQS based on 85 ppb interferes with a public notification program that should exist for a 75 ppb ozone level, and "EPA would be condoning the states providing information that can physically hurt people." As noted in Response 1, Mississippi's December 7, 2007, infrastructure submission was provided to address the 1997 8-hour ozone NAAQS and was submitted prior to EPA's promulgation of the 2008 8-hour ozone in March 2008. Thus, Mississippi provided sufficient information at that time to meet the requirement for the 1997 8-hour ozone NAAQS which is the subject of this action.

Finally, EPA notes that members of the public do get information related to the more recent NAAQS via the Air Quality Index (AQI) for ozone. When EPA promulgated the 2008 NAAQS, (73 FR 16436, March 27, 2008) EPA revised the AQI for ozone to show that at the level of the 2008 ozone NAAQS the AQI is set to 100, which indicates unhealthy ozone levels. It is this revised AQI that EPA uses to both forecast ozone levels and to provide notice to the public of current air quality. The EPA AIRNOW system uses the revised AQI as its basis for ozone. In addition, when Mississippi forecasts ozone and provides real-time ozone information to the public, either through the AIRNOW system or through its own Internet based system, the State uses the revised ozone AQI keyed to the 2008 revised ozone NAAQS. EPA believes this should address the Commenter's legitimate assertion.

Comment 5: Under the header "No Clean Air Act Section 110(l) analysis," the Commenter asserts that "if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes, this interferes with the requirement that PSD programs require sources to demonstrate that they will not cause or contribute to a violation of a NAAQS because this requirement includes the current 75 ppb ozone NAAQS."

Response 5: EPA believes that this comment gives no basis for concluding

that approval of the Mississippi infrastructure SIP violates the requirements of section 110(l). EPA assumes that the comment refers to the requirement that owners and operators of sources subject to PSD demonstrate that the allowable emissions from the proposed source or emission increases from a proposed modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to a violation of any NAAQS. 40 CFR 51.166(k)(1).

EPA further assumes that the Commenter's statement "if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes" refers to a hypothetical SIP-approved PSD program that only requires owners and operators of sources subject to PSD to make the demonstration discussed above for the 1997 ozone NAAQS, and not for the 2008 ozone NAAQS. However, the Commenter gives no indication that Mississippi's SIP-approved PSD program suffers from this alleged defect. EPA has examined the relevant provision in Mississippi's SIP, Regulation APC-S-5—Regulations for the Prevention of Significant Deterioration for Air Quality, and has determined that it satisfies the requirements of 51.166(k)(1) as the State has incorporated by reference 51.166 in its entirety.

Furthermore, as discussed in detail above, the infrastructure SIP makes no substantive change to any provision of Mississippi's SIP-approved PSD program, and therefore does not violate the requirements of section 110(l). Had Mississippi submitted a SIP revision that substantively modified its PSD program to limit the required demonstration to just the 1997 ozone NAAQS, then the comment might have been relevant to a 110(l) analysis of that hypothetical SIP revision. However, in this case, the comment gives no basis for EPA to conclude that the Mississippi infrastructure SIP would interfere with any applicable requirement of the Act.

EPA concludes that approval of Mississippi's December 7, 2007, infrastructure submission will not make the status quo air quality worse and is in fact consistent with the development of an overall plan capable of meeting the Act's requirements. Accordingly, when applying section 110(l) to this submission, EPA finds that approval of Mississippi's December 7, 2007, infrastructure submission is consistent with section 110 (including section 110(l)) of the CAA.

Comment 6: The Commenter provided comments on opposing the proposed approval of the infrastructure

submission because it did not identify a specific model to be used to demonstrate that a PSD source will not cause or contribute to a violation of the ozone NAAQS. Specifically, the commenter stated: "[t]he SIP submittals do not comply with Clean Air Act 110(a)(2)(J), (K), and (D)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source of modification will not cause or contribute to a violation [or] the ozone NAAQS."

The commenter asserted that because EPA does not require the use of a specific model, states use no modeling or use deficient modeling to evaluate these impacts. Specifically, the commenter alleged: "Many states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling (e.g. Kentucky using modeling from Georgia for the J.K. Smith proposed facility) is allowed."

To support the argument that EPA should designate a particular model and require states to use it, the Commenter attached and incorporated by reference a prior petition for rulemaking requesting that EPA designate such a model.¹⁹ The petition in question was submitted by Robert Ukeiley on behalf of the Sierra Club on July 28, 2010, requesting EPA to designate air quality models to use for PSD permit applications with regard to ozone and PM_{2.5}. As supporting documentation for that petition for rulemaking, the Commenter also resubmitted 15 attachments in the comment on EPA's proposed approval of the infrastructure submission. These attachments were as follows:

1. Exhibit 1: Comments from Camille Sears on the Ninth Conference on Air Quality Modeling (Docket ID: EPA-HQ-OAR-2008-0604) (November 10, 2008);

2. Exhibit 2: "Response to Petitions for Review, Supplemental Briefs, and Amicus Brief" regarding the Desert Rock Energy Company, LLC from Ann Lyons, EPA Region 9—Office of Regional Counsel and Brian L. Doster/Elliott Zenick, EPA Headquarters—Office of General Counsel (January 8, 2009);

3. Exhibit 3: Report, The Kentucky Natural Resources and Environmental Protection Cabinet, A Cumulative Assessment of the Environmental Impacts Caused by Kentucky Electric Generating Units, (December 17, 2001);

4. Exhibit 4: Letter from Richard A. Wayland, Director of the Air Quality

¹⁹ The Commenter attached the July 28, 2010, "Petition for Rulemaking to Designate Air Quality Models to use for PSD Permit Applications with Regard to Ozone and PM_{2.5}," from Robert Ukeiley on behalf of the Sierra Club.

Assessment Division, EPA Office Air Quality and Planning Standards to Robert Ukeiley regarding Mr. Ukeiley's Freedom of Information Act (FOIA) request on behalf of the Sierra Club for documents related to EPA development of a modeling protocol for PM_{2.5} (October 1, 2008);

5. Exhibit 5: Expert Report of Lyle R. Chinkin and Neil J. M. Wheeler, Analysis of Air Quality Impacts, prepared for Civil Action No. IP99-1693 C-M/S *United States v. Cinergy Corp.*, (August 28, 2008);

6. Exhibit 6: Illinois Environmental Protection Agency, Bureau of Air, Assessing the impact on the St. Louis Ozone Attainment Demonstration from the proposed electrical generating units in Illinois" (September 25, 2003);

7. Exhibit 7: Memorandum from Stephen D. Page, Director, EPA Office Air Quality and Planning Standards entitled, "Modeling Procedures for Demonstrating Compliance with the PM_{2.5} NAAQS" (March 23, 2010);

8. Exhibit 8: E-mail from Scott B. (Title and Affiliation not provided), to Donna Lucchese, (Title and Affiliation not provided), entitled, "Ozone impact of point source" (Date described as "Early 2000");

9. Exhibit 9: E-mail from Mary Portanova, EPA, Region 5, to Noreen Weimer, EPA, Region 5, entitled "FOIA—Robert Ukeiley—RIN-02114-09" (October 20, 2009, 10:05 CST);

10. Exhibit 10: Synopsis from PSD Modeling Workgroup—EPA/State/Local Workshop, New Orleans (May 17, 2005);

11. Exhibit 11: Letter from Carl E. Edlund, P.E., Director, EPA, Region 6 Multimedia Planning and Permitting Division to Richard Hyde, P.E. Deputy Director of the Office of Permitting and Registration, Texas Commission on Environmental Quality regarding "White Stallion Energy Center, PSD Permit Nos. PSD-TX-1160, PAL 26, and HAP 28" (February 10, 2010);

12. Exhibit 12: Memorandum from John S. Seitz, Director, EPA Office of Air Quality Planning & Standards entitled, "Interim Implementation of New Source Review Requirements for PM_{2.5}" (October 23, 1997);

13. Exhibit 13: Presentation by Erik Snyder and Bret Anderson (Titles and Affiliations not provided), to R/S/L Workshop, Single Source Ozone/PM_{2.5} Impacts in Regional Scale Modeling & Alternate Methods, (May 18, 2005);

14. Exhibit 14: Letter from Richard D. Scheffe, PhD, Senior Science Advisor, EPA, Office of Air Quality Planning & Standards to Abigail Dillen in response to an inquiry regarding the applicability of the Scheffe Point Source Screening Tables (July 28, 2000);

15. Exhibit 15: Presentation by Gail Tonnesen, Zion Wang, Mohammad Omary, Chao-Jung Chien (University of California, Riverside); Zac Adelman (University of North Carolina); Ralph Morris *et al.* (ENVIRON Corporation Int., Novato, CA) to the Ozone MPE, TAF Meeting, Review of Ozone Performance in WRAP Modeling and Relevance to Future Regional Ozone Planning, (July 30, 2008).

Finally, the Commenter stated that "EPA has issued guidance suggesting [that] PSD sources should use the ozone

limiting method for NO_x modeling."

The Commenter referred to EPA's March 2011 NO_x modeling guidance to support this position.²⁰ The Commenter then asserts that this "ozone modeling" helps sources demonstrate compliance and that sources should also do ozone modeling that may inhibit a source's permission to pollute. The Commenter argued that EPA's guidance supports the view that EPA must require states to require a specific model in their SIPs to demonstrate that proposed PSD sources do not cause or contribute to a violation of the ozone NAAQS.

Response 6: EPA disagrees with the Commenter's views concerning modeling in the context of acting upon the infrastructure submission. The Commenter raised four primary interrelated arguments: (1) The state's infrastructure SIP must specify a required model; (2) the failure to specify a model leads to inadequate analysis; (3) the attached petition for rulemaking explains why EPA should require states to specify a model; and (4) a recent guidance document concerning modeling for NO_x sources recommends using ozone limit methods for NO_x sources and EPA could issue comparable guidance for modeling ozone from a single source.

At the outset, EPA notes that although the Commenter sought to incorporate by reference the prior petition for rulemaking requesting EPA to designate a particular model for use by states for this purpose, the Agency is not required to respond to that petition in the context of acting upon the infrastructure submission. In reviewing the infrastructure submission, EPA is evaluating the state's submission in light of current statutory and regulatory requirements, not in light of potential future requirements that EPA has been requested to establish in a petition. Moreover, the petition arose in a different context, requests different relief, and raises other issues unrelated to those concerning ozone modeling raised by the Commenter in this action. EPA believes that the appropriate place to respond to the issues raised in the petition is in a petition response. Accordingly, EPA is not responding to the July 28, 2010 petition, in this action. The issues raised in that petition are under separate consideration.

EPA believes that the comment concerning the approvability of the

infrastructure submission based upon whether the SIP specifies the use of a particular model are germane to this action, but EPA disagrees with the Commenter's conclusions. The Commenter stated that the SIP submittals "do not comply with Clean Air Act 110(a)(2)(J), (K), and (D)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source [or] modification will not cause or contribute to a violation of the ozone NAAQS." EPA's PSD permitting regulations are found at 40 CFR 51.166 and 52.21. PSD requirements for SIPs are found in 40 CFR 51.166. Similar PSD requirements for SIPs that have been disapproved with respect to PSD and for SIPs incorporating EPA's regulations by reference are found in 40 CFR 52.21. The PSD regulations require an ambient impact analysis for ozone for proposed major stationary sources and major modifications to obtain a PSD permit (40 CFR 51.166(b)(23)(i), (i)(5)(i)(f),²¹ (k), (l) and (m) and 40 CFR 52.21(b)(23)(i), (i)(5)(i)(f),²² (k), (l) and (m)). The regulations at 40 CFR 51.166(l) state that for air quality models the SIP shall provide for procedures which specify that:

(1) All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in Appendix W of this part (Guideline on Air Quality Models).

(2) Where an air quality model specified in Appendix W of this part (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102.

These parts of 40 CFR Part 51 and 52 are the umbrella SIP components that states have either adopted by reference or the states have approved or been delegated authority to incorporate the PSD requirements of the CAA. As

²⁰ The Commenter attached an EPA memorandum dated March 1, 2011: "Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO₂ National Ambient Air Quality Standard," from Tyler Fox, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards.

²¹ Citation includes a footnote: "No de minimis air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data."

²² *Id.*

discussed above, these CFR part 51 and 52 PSD requirements refer to 40 CFR Part 51, Appendix W for the appropriate model to utilize for the ambient impact assessment. 40 CFR Part 51, Appendix W is the Guideline on Air Quality models and Section 1.0.a. states:

The *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source review (NSR), including prevention of significant deterioration (PSD) [footnotes not included]. Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies, and by industry * * * The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.

Appendix W Section 5.2.1. includes the *Guideline* recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Specifically, Section 5.2.1.c states: "Estimating the Impact of Individual Sources. Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2)."

Appendix W Section 5.2.1.c provides that the model users (state and local permitting authorities and permitting applicants) should work with the appropriate EPA Regional Office on a case-by-case basis to determine an adequate method for performing an air quality analysis for assessing ozone impacts. Due to the complexity of modeling ozone and the dependency on the regional characteristics of atmospheric conditions, EPA believes this is an appropriate approach rather than specifying one particular preferred model nationwide, which may not be appropriate in all circumstances. Instead, the choice of method "depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office * * * ." Appendix W Section 5.2.1.c. Therefore, EPA continues to believe it is appropriate for permitting authorities to consult and work with EPA Regional Offices as described in Appendix W, including section 3.0.b and c, 3.2.2, and 3.3, to determine the appropriate approach to assess ozone impacts for each PSD required evaluation.^{23 24 25 26}

²³ 40 CFR part 51 Appendix W, Section 3.0.b. states: "In this guidance, when approval is required for a particular modeling technique or analytical procedure, we often refer to the 'appropriate reviewing authority'. In some EPA regions, authority for NSR and PSD permitting and related activities have been delegated to State and even

Although EPA has not selected one particular preferred model in Appendix A of Appendix W (Summaries of Preferred Air Quality Models) for conducting ozone impact analyses for individual sources, state/local permitting authorities must comply with the appropriate PSD FIP or SIP requirements with respect to ozone.

The current SIP meets the requirements of 40 CFR 52.21 and 40 CFR 51.166(l)(1). Specifically, the

local agencies. In these cases, such agencies are 'representatives' of the respective regions. Even in these circumstances, the Regional Office retains authority in decisions and approvals. Therefore, as discussed above and depending on the circumstances, the appropriate reviewing authority may be the Regional Office, Federal Land Manager(s), State agency(ies), or perhaps local agency(ies). In cases where review and approval comes solely from the Regional Office (sometimes stated as 'Regional Administrator'), this will be stipulated. If there is any question as to the appropriate reviewing authority, you should contact the Regional modeling contact (<http://www.epa.gov/scram001/tt28.htm#regionalmodelingcontacts>) in the appropriate EPA Regional Office, whose jurisdiction generally includes the physical location of the source in question and its expected impacts."

²⁴ 40 CFR part 51 Appendix W, Section 3.0.c. states: "In all regulatory analyses, especially if other-than-preferred models are selected for use, early discussions among Regional Office staff, State and local control agencies, industry representatives, and where appropriate, the Federal Land Manager, are invaluable and encouraged. Agreement on the data base(s) to be used, modeling techniques to be applied and the overall technical approach, prior to the actual analyses, helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The use of an air quality analysis checklist, such as is posted on EPA's Internet SCRAM Web site (subsection 2.3), and the preparation of a written protocol help to keep misunderstandings at a minimum."

²⁵ 40 CFR part 51 Appendix W, Section 3.2.2.a. states: "Determination of acceptability of a model is a Regional Office responsibility. Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the recommendations of this subsection. This finding will normally result from a determination that (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or analytical procedure is available and applicable."

²⁶ 40 CFR part 51 Appendix W, Section 3.3.a. states: "The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness and consistency in modeling decisions is fostered among the various Regional Offices and the States. To satisfy that need, EPA established the Model Clearinghouse and also holds periodic workshops with headquarters, Regional Office, State, and local agency modeling representatives." Section 3.3.b. states "The Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the Regional Office may request assistance from the Model Clearinghouse after an initial evaluation and decision has been reached concerning the application of a model, analytical technique or data base in a particular regulatory action." (footnote omitted).

Mississippi SIP states at Regulation APC-S-2 (V) (B)—*Air Quality Models*:

"1. All estimates of ambient concentrations of air pollutants shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" 40 CFR, Part 52,²⁷ Appendix W, which are incorporated herein and adopted by reference.

2. Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" 40 CFR, Part 52,²⁸ Appendix W, is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Written approval of the DEQ and the Administrator of EPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to public notice and opportunity for public comment."

Additionally, the Mississippi SIP states at Regulation APC-S-5(1):

The purpose of this regulation is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 52.21 and 51.166. This regulation supersedes and replaces the previous adoption by reference of 40 CFR 52.21 and 40 CFR 51.166. 40 CFR 52.21 and 51.166 as used in this regulation refer to the federal regulations as amended and promulgated by July 1, 2004 * * *

These statements in the Federally approved Mississippi SIP provide a reference to 40 CFR Part 51, Appendix W. The commitment in Mississippi's SIP to implement and adopt air quality models utilizing 40 CFR part 51, Appendix W as a basis is appropriate and consistent with Federal regulations.

Mississippi requires that PSD permit applications contain an analysis of ozone impacts from the proposed project. As recommended by Appendix W, the methods used for the ozone impacts analysis for individual PSD permit actions are determined on a case-by-case basis. Mississippi consults with EPA Region 4 on a case-by-case basis for evaluating the adequacy of the ozone impact analysis. When appropriate, EPA Region 4 provides input/comments on the analysis. As stated in Section 5.2.1.c. of Appendix W, the "[c]hoice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions." Therefore, based on an evaluation of the source, its emissions and background ozone concentrations, an ozone impact analysis other than modeling may be required. While in others cases a

²⁷ This reference to part 52 is a typographical error and should reference part 51.

²⁸ This reference to part 52 is a typographical error and should reference part 51.

complex photochemical grid type modeling analysis, as discussed below, may be warranted. As noted, the appropriate methods are determined in consultation with EPA Region 4 on a case-by-case basis.

As a second point, the Commenter asserted that states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or the use of completely irrelevant modeling is allowed.

EPA agrees that States should not be using inappropriate analytical tools in this context. For example, the Commenter's Exhibit 14 does discuss the inappropriateness of using a screening technique referred to as the "Scheffe Tables." The Commenter is correct that the use of "Scheffe Tables" and other particular screening techniques, which involve ratios of nitrogen oxides (NO_x) to volatile organic compounds (VOC) that do not consider the impact of biogenic emissions, or that use other outdated or irrelevant modeling, is inappropriate to evaluate a single source's ozone impacts on an air quality control region. More scientifically appropriate screening and refined tools are available and should be considered for use. Therefore, EPA continues to believe States should consult and work with EPA Regional Offices as described in Appendix W on a case-by-case basis to determine the appropriate method for estimating the impacts of these ozone precursors from individual sources.

For ozone, a proposed emission source's impacts are dependent upon local meteorology and pollution levels in the surrounding atmosphere. Ozone is formed from chemical reactions in the atmosphere. The impact a new or modified source can have on ozone levels is dependent, in part, upon the existing atmospheric pollutant loading already in the region with which emissions from the new or modified source can react. In addition, meteorological parameters such as wind speed, temperature, wind direction, solar radiation influx, and atmospheric stability are also important factors. The more sophisticated analyses consider meteorology and interactions with emissions from surrounding sources. EPA has not identified an established modeling system that would fit all situations and take into account all of the additional local information about sources and meteorological conditions. The Commenter submitted a number of exhibits (including Exhibits 10, 11, and 13) in which EPA has previously indicated a preference for using a photochemical grid model when

appropriate modeling databases exist and when it is acceptable to use the photochemical grid modeling to assess a specific source.

Commenter's Exhibit 13 includes a list of issues to evaluate, which aid in considering if the existing photochemical grid modeling databases are acceptable, and discusses the need for permitting authorities to consult with the EPA Regional Office in determining if photochemical grid modeling would be appropriate for conducting an ozone impacts analysis. In these documents EPA has indicated that photochemical grid modeling (e.g., CAMx or CMAQ) is generally the most sophisticated type of modeling analysis for evaluating ozone impacts, and it is usually conducted by adding a source into an existing modeling system to determine the change in impact from the source. The analysis is done by comparing the photochemical grid modeling results which include the new or modified source under evaluation with the results from the original modeling analysis that does not contain the source. Photochemical grid modeling is often an excellent modeling exercise for evaluating a single source's impacts on an air quality control region when such models are available and appropriate to utilize because they take into account the important parameters and the models have been used in regional modeling for attainment SIPs.

There are also reactive plume models, however, that may also be appropriate. EPA has approved the use of plume models in some instances, but these models are not always appropriate because of the difficulty in obtaining the background information to make an appropriate assessment of the photochemistry and meteorology impacts.

The use of reactive plume models may also be appropriate under certain circumstances. EPA has approved the use of plume models in some instances, but these models are not always appropriate because of the difficulty in obtaining the background information to make an appropriate assessment of the photochemistry and meteorology impacts.

EPA has not selected a specific "preferred" model for conducting an ozone impact analysis. Model selection normally depends upon the details about the modeling systems available and if they are appropriate for assessing the impacts from a proposed new source or modification. Considering that a photochemical modeling system with inputs, including meteorological and emissions data, that would also have to be evaluated for model performance,

could potentially be costly and time consuming to develop, EPA has taken a case-by-case evaluation approach. Such photochemical modeling databases are typically developed so that impacts of regulatory actions across multiple sources can be evaluated, and therefore the time and financial costs can be absorbed by the regulatory body. It is these types of databases that have the potential to be used to assess single source ozone impacts after they have been developed as part of a regional modeling demonstration to support a SIP. From a cost and time requirement standpoint, EPA would generally not expect a single source to develop an entire photochemical modeling system just to evaluate its individual impacts on an air quality region, as long as other methods of analyzing ozone impacts are available and acceptable to EPA.

When an existing photochemical modeling system is deemed appropriate, it is an excellent tool to evaluate the ozone impact that a single source's emissions can have on an air quality region in the context of PSD modeling and should be evaluated for potential use. More often now than 10 or 15 years ago, a photochemical modeling system may be available that covers the geographic area of concern. EPA notes that even where photochemical modeling is readily available, it should be evaluated as part of the development of a modeling protocol, in consultation with the Regional Office to determine its appropriateness for conducting an impact analysis for a particular proposed source or modification.²⁹ Factors to consider when evaluating the appropriateness of a particular photochemical modeling system include, but are not limited to, meteorology, year of emissions projections, model performance issues in the area of concern or in areas that might impact projections in the area of concern. Therefore, even where photochemical modeling systems exist, there may be circumstances where their use is inappropriate for estimating the ozone impacts of a proposed source or modification. Because of these scientific issues and the need for appropriate case-by-case technical considerations, EPA has not designated a single "Preferred Model" for conducting single source impact analyses for ozone in Appendix A or Appendix W.

In summary, the Commenter states that many States abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of

²⁹ 40 CFR part 51 Appendix W, Sections 3.0, 3.2., 3.3, 5.2.1.c and commenter Exhibit 13.

completely irrelevant modeling is allowed. For the reasons described in this response to comment, we do not believe that one modeling system is presently appropriate to designate for all situations, yet that does not relieve proposed sources and modifications from the obligation of making the required demonstration under the applicable PSD rules. The Mississippi SIP contains a reference for use of the procedures specified in EPA's "Guideline on Air Quality Models" (40 CFR part 51 Appendix W) for estimating ambient concentrations of criteria pollutants, including ozone (Regulation APC-S-2 (V)(B)—*Air Quality Models*). As such, Mississippi requires that PSD permit applications contain an analysis of ozone impacts from the proposed project. As recommended by Appendix W, the methods used for the ozone impacts analysis are determined on a case-by-case basis. Mississippi consults with EPA Region 4 on a case-by-case basis for evaluating the adequacy of the ozone impact analysis. When appropriate, EPA Region 4 provides input/comments on the analysis. Because EPA has not designated one particular model as being appropriate in all situations for evaluating single source ozone impacts, EPA Region 4 concurs with Mississippi's proposed approach.

In conclusion, for the reasons stated it is difficult to identify and implement a specific standardized national model for ozone. EPA has had a standard approach in its PSD SIP and FIP rules of not mandating the use of a particular model for all circumstances, instead treating the choice of a particular method for analyzing ozone impacts as circumstance-dependent. EPA then determines whether the State's implementation plan revision submittal meets the PSD SIP requirements. For purposes of review for this infrastructure SIP, Mississippi has an EPA-approved PSD SIP that meets the EPA PSD requirements under 40 CFR 51.166.

Finally, the Commenter argued that EPA's March 2011 guidance concerning modeling for the 1-hour nitrogen dioxide (NO₂) NAAQS demonstrates that similar single source modeling could be conducted for sources for purposes of the ozone NAAQS. Specifically, the commenter argued that the model used for other criteria pollutants (AERMOD), incorporates ozone chemistry for modeling NO₂ and therefore is modeling ozone chemistry for a single source. The Commenter stated that this guidance suggested that PSD sources should use the ozone

limiting method for NO_x modeling.³⁰ Further, the Commenter noted that this technique "is modeling of ozone chemistry for a single source." and therefore that this modeling with ozone chemistry allows a source to be permitted. The commenter concludes with the assertion that EPA must require the SIPs to include a model to use to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS.

EPA's recent March 2011 guidance for the NO₂ NAAQS does discuss using two different techniques to estimate the amount of conversion of NO_x emissions to NO₂ ambient NO₂ concentrations as part of the NO₂ modeling guidance. NO_x emissions are composed of NO and NO₂ molecules. These two techniques, which have been available for years, are the Ozone Limiting Method (OLM), which was mentioned by the Commenter, and the Plume Volume Molar-Ratio-Method (PVMRM). Both of these techniques are designed and formulated based on the principle of assuming available atmospheric ozone mixes with NO/NO₂ emissions from sources. This "mixing" results in ozone molecules reacting with the NO molecules to form NO₂ and O₂. This is a simple one-direction chemical reaction that is used to determine how much NO is converted to NO₂ for modeling of the NO₂ standard. Thus, these techniques do not predict ozone concentrations, rather they take ambient ozone data as model inputs to determine the calculation of NO conversion to NO₂. These techniques are not designed to calculate the amount of ozone that might be generated as the NO_x emissions traverses downwind of the source and potentially reacts with other pollutants in the atmosphere. Rather, these two techniques rely on a one-way calculation based on an ozone molecule (O₃) reacting with an NO molecule to generate an NO₂ molecule and an O₂ molecule.^{31 32}

As previously mentioned, these two techniques do not attempt to estimate the amount of ozone that might be generated, and the models in which these techniques are applied are not designed or formulated to even account

for the potential generation of ozone from emissions of NO/NO₂. Ozone chemistry has many cycles of destruction and generation and is dependent upon a large number of variables, including VOC concentrations and the specific types of VOC molecules present, other atmospheric pollutant concentrations, meteorological conditions, and solar radiation levels as already discussed in this response. Since OLM and PVMRM do not include any of these scientific principles and do not account for any chemical mechanisms that would generate ozone, these techniques cannot be used for determining potential changes in ozone levels from a proposed source or modification.

In summary, the Commenter asserts that the OLM technique models of ozone chemistry for a single source and that this modeling helps a source demonstrate compliance with the NO₂ standard. The Commenter is concerned that EPA has not designated a single specific OLM technique is not also used to determine ozone impacts and believes that EPA should rectify this concern. To do so the Commenter concludes that EPA must require the SIPs to include a model to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS. As previously discussed, EPA disagrees and reiterates that the OLM (and PVMRM) are simple chemistry techniques that are not formulated to be capable to determine potential ozone impacts from a proposed source or modification.

For the reasons discussed above, EPA does not believe that the comments provide a basis for not approving the infrastructure submission. In short, EPA has not modified the Guidelines in Appendix W for ozone impacts analysis for a single source (Appendix W Part 5.2.1.c.) to require use of a specific model as the Commenter requests. EPA finds that the State has the appropriate regulations to operate the PSD program consistent with Federal requirements. Furthermore, we disagree that states are required to designate a specific model in the SIP, because App. W states that state and local agencies should consult with EPA on a case-by-case basis to determine what analysis to require.

V. Final Action

As described above, MDEQ has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Mississippi. EPA is taking final action to

³⁰ The Commenter attached EPA memorandum dated March 1, 2011: "Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO₂ National Ambient Air Quality Standard," from Tyler Fox, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards.

³¹ "AERMOD: Model Formulation Document", http://www.epa.gov/scram001/7thconf/aermod/aermod_mfd_addm_rev.pdf.

³² Hanrahan, P.L., 1999a. "The plume volume molar ratio method for determining NO₂/NO_x ratios in modeling. Part I: Methodology," J. Air & Waste Manage. Assoc., 49, 1324–1331.

approve Mississippi's December 7, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 30, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Z—Mississippi

- 2. Section 52.1270(e) is added to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(e) *EPA approved Mississippi non-regulatory provisions.*

EPA APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date	Explanation
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	Mississippi	12/7/2007	7/13/2011 [Insert citation of publication].	For the 1997 8-hour ozone NAAQS.

[FR Doc. 2011-17467 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2011-0327; FRL-8878-4]

2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid [(HO)S(O)₂2O₂] sodium salt (1:2)-initiated; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid [(HO)S(O)₂2O₂] sodium salt (1:2)-initiated (also known here as: “the Polymer”); when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960. Akzo Nobel Surface Chemistry LLC, 909 Mueller Avenue, Chattanooga, TN 37406 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of “the Polymer” on food or feed commodities.

DATES: This regulation is effective July 13, 2011. Objections and requests for hearings must be received on or before September 12, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2011-0327. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Mark Dow, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; *telephone number:* (703) 305-5533; *e-mail address:* dow.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at http://ecfr.gpoaccess.gov/cgi/t/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation

and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2011-0327 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 12, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2011-0327, by one of the following methods.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of April 20, 2011 (76 FR 22069) (FRL-8869-7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 1E7834) filed by Akzo Nobel Surface Chemistry LLC, 909 Mueller Avenue, Chattanooga, TN 37406. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid [(HO)S(O)₂2O₂] sodium salt (1:2)-

initiated (CASRN 1246766-57-3). That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments. Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *" and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered

available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid [(HO)S(O)2]2O2 sodium salt (1:2)-initiated conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, "the Polymer" meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to "the Polymer".

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid [(HO)S(O)2]2O2 sodium salt (1:2)-initiated could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of "the Polymer" is 1,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since "the Polymer" conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found "the Polymer" to share a common mechanism of toxicity with any other substances, and "the Polymer" does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that "the Polymer" does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at <http://www.epa.gov/pesticides/cumulative>.

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and

children. Due to the expected low toxicity of “the Polymer”, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid [(HO)S(O)₂]₂ sodium salt (1:2)-initiated.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for “the Polymer”.

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid [(HO)S(O)₂]₂ sodium salt (1:2)-initiated from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not

impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 27, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, the table is amended by adding alphabetically the following polymers to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * *	* * * * *
2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid ([HO)S(O)2]2O2 sodium salt (1:2)-initiated minimum number average molecular weight > 1,000 Daltons; maximum number average molecular weight 10,000 Daltons.	CASRN 1246766–57–3
* * * * *	* * * * *

[FR Doc. 2011–17391 Filed 7–12–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2011–0016]

RIN 2127–AK90

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends 49 CFR Part 544, Insurer Reporting Requirements. This Part specifies the requirements for annual insurer reports and lists in appendices those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices must file three copies of its report for the 2008 calendar year before October 25, 2011. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: This final rule becomes effective on August 12, 2011. Insurers listed in the appendices are required to submit reports on or before October 25, 2011. If you wish to submit a petition for reconsideration of this rule, your petition must be received by August 29, 2011.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Room W41–307, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., West Building, Room W43–439, Washington, DC 20590, by electronic mail to carlita.ballard@dot.gov. Ms. Ballard's telephone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information*, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Pursuant to 49 U.S.C. Section 33112(f), the following insurers are subject to the reporting requirements:

- (1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;
- (2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state and;
- (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA

finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term “small insurer” is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a “small insurer,” but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (49 CFR part 544; 52 FR 59, January 2, 1987), NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler, since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best¹ publishes in its *State/Line Report*

¹ A.M. Best Company is a well-recognized source of insurance company ratings and information. 49

each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer;

(2) the insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to Part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from *Automotive Fleet Magazine* and *Auto Rental News*.²

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report before October 25, 2011, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

¹ U.S.C. 33112(i) authorizes NHTSA to consult with public and private organizations as necessary.

² *Automotive Fleet Magazine* and *Auto Rental News* are publications that provide information on the size of fleets and market share of rental and leasing companies.

II. Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

On April 12, 2011, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (76 FR 20298). Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on September 3, 2010 (75 FR 54041). Based on the 2008 calendar year market share data from A.M. Best, NHTSA proposed to remove California State Auto Group and Safeco Insurance Group from Appendix A.

Appendix B lists insurers required to report because each insurer had a 10 percent or greater market share of motor vehicle premiums in a particular State. Based on the 2008 calendar year data for market shares from A.M. Best, we proposed to remove Balboa Insurance Group of South Dakota from Appendix B.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. NHTSA proposed to make no change to Appendix C.

Public Comments on Final Determination

Insurers of Passenger Motor Vehicles

The agency received no comments in response to the NPRM. Therefore, this final rule adopts the proposed changes to Appendices A and B. Accordingly, NHTSA has determined that each of the 17 insurers listed in Appendix A, each of the eight insurers listed in Appendix B and each of five companies listed in Appendix C are required to submit an insurer report on its experience for calendar year 2008 no later than October 25, 2011, and set forth the information required by Part 544. As long as these insurers and companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Submission of Theft Loss Report

Passenger motor vehicle insurers listed in the appendices can forward their theft loss reports to the agency in several ways:

- a. *Mail*: Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, Department of Transportation, NHTSA, West Building, 1200 New Jersey Avenue, SE., NVS-131, Room W43-439, Washington, DC 20590
- b. *E-Mail*: carlita.ballard@dot.gov; or
- c. *Fax*: (202) 493-2990.

Theft loss reports may also be submitted to the docket electronically [identified by Docket No. NHTSA-2011-0016] by:

d. *Logging onto the Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the online instructions for filing the document electronically.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866, Regulatory Planning and Review. NHTSA has considered the impact of this final rule and determined that the action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. The cost estimates in the 1987 final regulatory evaluation should be adjusted for inflation, using the Bureau of Labor Statistics Consumer Price Index for 2011 ([see http://www.bls.gov/cpi](http://www.bls.gov/cpi)). The agency estimates that the cost of compliance is \$50,000 (1987 dollars) for any insurer added to Appendix A, \$20,000 (1987 dollars) for any insurer added to Appendix B, and \$5,770 (1987 dollars) for any insurer added to Appendix C. This final rule proposed to remove two companies from Appendix A, remove one company from Appendix B, and make no change to Appendix C. Therefore, the net effect of this final rule is a decreased cost of \$120,000 (1987 dollars) to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Technical Reference Division, 1200 New Jersey Avenue, SE., East Building (Ground Floor), Room E12-100, Washington, DC 20590, or by calling (202) 366-2588.

2. Paperwork Reduction Act

The information collection requirements in this final rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The existing information collection indicates that the number of respondents for this collection is thirty, however, the actual number of respondents fluctuate from year to year. Therefore, because the number of respondents required to report for this final rule does not exceed the number of respondents indicated in the existing information collection, the agency does not believe that an amendment to the existing information collection is necessary. This collection of information is assigned OMB Control Number 2127-0547 ("Insurer Reporting Requirements").

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies listed on Appendices A, B or C are construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice exempts all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency exempts all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self-insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law, 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, and section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

7. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

8. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- ☐ Have we organized the material to suit the public's needs?
- ☐ Are the requirements in the proposal clearly stated?
- ☐ Does the proposal contain technical language or jargon that is not clear?
- ☐ Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- ☐ Would more (but shorter) sections be better?
- ☐ Could we improve clarity by adding tables, lists, or diagrams?
- ☐ What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, 1200 New Jersey Avenue, SE., NVS-131, Room W43-439, Washington, DC 20590

b. *E-mail:* carlita.ballard@dot.gov; or
Fax: (202) 493-2990

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

PART 544—[AMENDED]

- 1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

- 2. In § 544.5, paragraph (a), the second sentence is revised to read as follows:

§ 544.5 General requirements for reports.

(a) * * * This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2011 will contain the required information for the 2008 calendar year).

* * * * *

- 3. Appendix A to part 544 is revised to read as follows:

Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
Auto Club Enterprise Insurance Group
Auto-Owners Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Erie Insurance Group
Farmers Insurance Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Mercury General Group
Nationwide Group
Progressive Group
State Farm Group
Travelers Companies
USAA Group

- 4. Appendix B to part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Auto Club (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Safety Group (Massachusetts)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

- 5. Appendix C to part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Avis Budget Group (*subsidiary of Cendant*)
Dollar Thrifty Automotive Group
Enterprise Holding Inc./Enterprise Rent-A-Car Company
Hertz Rent-A-Car Division (*subsidiary of The Hertz Corporation*)
U-Haul International, Inc. (*Subsidiary of AMERCO*)

Issued on: July 6, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011-17642 Filed 7-12-11; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 040205043-4043-01]

RIN 0648-XA552

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure of the 2011–2012 Commercial Sector for Black Sea Bass in the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for black sea bass in the exclusive economic zone (EEZ) of the South Atlantic. NMFS has determined that the quota for the commercial sector for black sea bass will have been reached by July 15, 2011. This closure is necessary to protect the black sea bass resource.

DATES: Closure is effective 12:01 a.m., local time, July 15, 2011, through 12:01 a.m., local time, on June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727-824-5305, fax 727-824-5308, e-mail Catherine.Bruger@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic

Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for black sea bass in the South Atlantic at 309,000 lb (140,160 kg) for the current fishing year, June 1, 2011, through May 31, 2012, as specified in 50 CFR 622.42(e)(5)(iii).

Black sea bass are managed throughout their range. In the South Atlantic EEZ, black sea bass are managed by the Council from 35°15.19' N. lat., the latitude of Cape Hatteras Light, North Carolina, south. From Cape Hatteras Light, North Carolina, through Maine, black sea bass are managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. Therefore, the closure provisions contained in this notice are applicable to those vessels harvesting or possessing black sea bass from Key West, Florida, through Cape Hatteras Light, North Carolina.

Under 50 CFR 622.43(a), NMFS is required to close the commercial sector for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on current statistics, NMFS has determined that the available commercial quota of 309,000 lb (140,160 kg) for black sea bass will be reached on or before July 15, 2011. Accordingly, NMFS is closing the commercial sector for black sea bass in the South Atlantic EEZ from 12:01 a.m., local time, on July 15, 2011, through 12:01 a.m., local time, on June 1, 2012. The operator of a vessel with a valid commercial vessel permit for snapper-grouper having black sea bass onboard must have landed and bartered, traded, or sold such black sea bass prior to 12:01 a.m., local time, July 15, 2011.

During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(vii) and (d)(2), respectively, apply to all harvest or possession of black sea bass in or from the South Atlantic EEZ, and the sale or purchase of black sea bass taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of black sea bass that were

harvested, landed ashore, and sold prior to 12:01 a.m., local time, July 15, 2011, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for black sea bass would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the commercial sector to the harvest of black sea bass constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the black sea bass stock because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 8, 2011.

Margo Schulze-Haugen,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011-17639 Filed 7-8-11; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 76, No. 134

Wednesday, July 13, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM462; Notice No. 25-11-15-SC]

Special Conditions; Cessna Aircraft Company Model M680 Airplane; Lithium-ion Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Cessna Aircraft Company Model 680 airplane. This airplane will have a novel or unusual design feature associated with Lithium-ion batteries. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by August 12, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM462, 1601 Lind Avenue, SW., Renton, Washington 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM462 You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, FAA, Airplane & Flight Crew Interface Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington

98057-3356; telephone (425) 227-2432; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On October 3, 2006, Cessna Aircraft Company applied for a change to Type Certification No. (TC) T00012WI for installation of Lithium-ion batteries in the Model 680. The Model 680 is a twin-engine, medium-size business jet with a maximum passenger capacity of 12. This airplane has a maximum takeoff weight of 30,300 lbs and has two Pratt & Whitney 306C engines.

The regulations do not address the novel and unusual design features associated with the installation of rechargeable Lithium-ion batteries.

Type Certification Basis

Under the provisions of § 21.101, Cessna Aircraft Company must show that the Model 680, as changed, continues to meet the applicable provisions of the regulations

incorporated by reference in TC T00012WI or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in TC T00012WI are as follows:

Title 14, Code of Federal Regulations (14 CFR) part 25, effective February 1, 1965, as amended by amendments 25-1 through 25-98. Refer to TC T00012WI, as applicable, for a complete description of the type-certification basis for this model, including special conditions and exemptions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 680 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model 680 must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The Model 680 will incorporate the following novel or unusual design features:

Cessna Aircraft Company proposes to use rechargeable Lithium-ion main batteries and Auxiliary Power Unit (APU) start batteries on the Model 680, and is also considering the use of this Lithium-battery technology in several

other auxiliary-battery applications in these airplanes. This type of battery possesses certain failure and operational characteristics, and maintenance requirements that differ significantly from that of the Nickel-Cadmium (Ni-Cd) and Lead-acid rechargeable batteries currently approved for installation in transport-category airplanes. Large, high-capacity, rechargeable Lithium batteries are a novel or unusual design feature, and current regulations in 14 CFR part 25 do not address installation of rechargeable Lithium batteries. The FAA is proposing these special conditions to require that:

(1) All characteristics of the Lithium batteries and its installation that could affect safe operation of the Model 680 are addressed, and

(2) Appropriate Instructions for Continued Airworthiness, which include maintenance requirements, are established to ensure the availability of electrical power from the batteries when needed.

Discussion

The current regulations governing the installation of batteries in transport-category airplanes were derived from Civil Air Regulation (CAR) 4b.625(d) as part of the recodification of CAR 4b that established Federal Aviation Regulations (FAR) in 14 CFR part 25 in February, 1965. The new battery requirements, 14 CFR 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of Ni-Cd batteries in small airplanes resulted in increased incidents of battery fires and failures, which led to additional rulemaking affecting transport-category airplanes as well as small airplanes. These regulations were incorporated into § 25.1353(c)(5) and (c)(6), which govern Ni-Cd battery installations on transport-category airplanes.

The proposed use of rechargeable Lithium batteries for equipment and systems on the Model 680 airplane has prompted the FAA to review the adequacy of existing battery regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of Lithium batteries that could affect the safety and reliability of the battery installations on the Model 680 airplane.

The use of Lithium rechargeable batteries in applications involving commercial aviation has limited history. However, other users of this technology, ranging from wireless-telephone manufacturers to the electric-vehicle industry, have noted safety problems with Lithium batteries. These problems

include overcharging, over-discharging, and Lithium-battery cell-component flammability.

1. Overcharging

In general, Lithium-ion batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.*, thermal runaway) than their Ni-Cd or Lead-acid counterparts. This is especially true for overcharging, which causes heating and destabilization of the components of the Lithium-battery cell, which can lead to the formation, by plating, of highly unstable metallic Lithium. The metallic Lithium can ignite, resulting in a self-sustaining fire or explosion. The severity of thermal runaway due to overcharging increases with increased battery capacity due to the higher amount of electrolyte in large batteries.

2. Over-Discharging

Discharge of some versions of the Lithium-battery cell beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes in the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crewmembers as a means of checking battery status, a problem shared with Ni-Cd batteries.

3. Flammability of Cell Components

Unlike Ni-Cd and Lead-acid cells, some types of Lithium-battery cells use flammable liquid electrolytes. The electrolyte can serve as a source of fuel for an external fire if the cell container is breached.

The problems that Lithium-battery users experience raise concerns about the use of these batteries in commercial aviation. The intent of these proposed special conditions is to establish appropriate airworthiness standards for Lithium-battery installations in the Model 680 airplane, and to ensure, as required by §§ 25.601 and 25.1309, that these battery installations will not result in an unsafe condition.

To address these concerns, these special conditions adopt the following requirements:

- Those sections of § 25.1353 that are applicable to Lithium batteries.
- The flammable-fluid fire-protection requirements of § 25.863. In the past, this rule was not applied to batteries in transport-category airplanes because the electrolytes in Lead-acid and Ni-Cd batteries are not considered flammable.
- New requirements to address hazards of overcharging and over-

discharging that are unique to rechargeable Lithium-ion batteries.

- Section 25.1529, Instructions for Continued Airworthiness, must include maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge, and installed Lithium batteries are sufficiently charged at appropriate intervals. These instructions must also describe proper repairs, if allowed, and battery part-number configuration control.

Applicability

As discussed above, these special conditions are applicable to the Model 680 airplane. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type-certification basis for Cessna Aircraft Company Model 680 airplanes.

In lieu of the requirements of § 25.1353(c)(1) through (c)(4) at amendment 25-42, Lithium-ion batteries and battery installations on the Cessna Model 680 airplane must be designed and installed as follows:

(1) Safe Lithium-ion battery-cell temperatures and pressures must be maintained during any charging or discharging condition, and during any failure of the battery-charging or battery-monitoring system not shown to be extremely remote. The Lithium-battery installation must preclude explosion in the event of those failures.

(2) Design of Lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any Lithium battery in normal operation, or as the result of any failure of the battery-charging or battery-monitoring system, or battery

installation which is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Installations of Lithium batteries must meet the requirements of 14 CFR 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any Lithium battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more severe failure condition, as determined in accordance with 14 CFR 25.1309(b).

(6) Each Lithium-battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium-battery installations must have a system to control automatically the charging rate of the battery to prevent battery overheating or overcharging, and

(i) A battery-temperature-sensing and over-temperature-warning system with a means to automatically disconnect the battery from its charging source in the event of an over-temperature condition or,

(ii) A battery-failure sensing-and-warning system with a means to automatically disconnect the battery from its charging source in the event of battery failure.

(8) Any Lithium-battery installation, the function of which is required for safe operation of the airplane, must incorporate a monitoring-and-warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The instructions for continued airworthiness required by § 25.1529 (and § 26.11) must contain maintenance steps to assure that the Lithium batteries are sufficiently charged at appropriate intervals specified by the battery manufacturer. The instructions for continued airworthiness must also contain procedures to ensure the integrity of Lithium batteries in spares storage to prevent the replacement of batteries, the function of which are required for safe operation of the airplane, with batteries that have experienced degraded charge-retention ability or other damage due to prolonged storage at a low state-of-charge. Precautions should be included in the continued-airworthiness maintenance instructions to prevent mishandling of Lithium batteries, which

could result in short-circuit or other unintentional damage that could result in personal injury or property damage.

Note 1: The term “sufficiently charged” means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where there is a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

Note 2: These special conditions are not intended to replace § 25.1353(c) in the certification basis of the Cessna Model 680 airplane. These special conditions apply only to Lithium-ion batteries and rechargeable Lithium-battery-system installations. The requirements of § 25.1353(c) remain in effect for batteries and battery installations on the Cessna Model 680 airplane that do not use Lithium-ion batteries.

Issued in Renton, Washington, on July 1, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011-17535 Filed 7-12-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2011-0731; Directorate Identifier 2010-NE-39-AD

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney Corp. (PW) JT9D-7R4H1 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all PW JT9D-7R4H1 turbofan engines. This proposed AD would require removing certain high-pressure compressor (HPC) shafts before their certified life limits, and establishes a new, lower life-limit for these parts. This proposed AD was prompted by reports of cracks in five HPC shafts. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 29, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7178; fax: 781-238-7199; e-mail: ian.dargin@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2011-0731; Directorate Identifier 2010-NE-39-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received reports of five JT9D-7R4H1 engines containing an HPC shaft with cracks in the thread grooves of the rear shaft. These engines have the highest-thrust rating of the JT9D models, and were operating in hot environments. Higher operating metal

temperatures impose a greater low-cycle fatigue life debit for each operating cycle, requiring removing the affected shafts before reaching their certified life limits. All of the cracked shafts were from the same fleet and engine model. This condition, if not corrected, could result in failure of the HPC shaft that could lead to an uncommanded in-flight shutdown or a possible uncontained engine failure and damage to the airplane.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require:

- For HPC shafts that have more than 4,500 cycles-since-new (CSN) on the effective date of this AD, removing the HPC shaft from service within 500 cycles-in-service (CIS) after the effective date of this proposed AD or at the next shop visit after the effective date of this proposed AD, whichever occurs first.
- For HPC shafts that have 4,500 or fewer CSN on the effective date of this AD, removing the HPC shaft from service before exceeding 5,000 CSN.

Costs of Compliance

We estimate that this proposed AD would not affect any engines installed on airplanes of U.S. registry.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications

under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Pratt & Whitney Corp: Docket No. FAA–2011–0731; Directorate Identifier 2010–NE–39–AD.

(a) Comments Due Date

We must receive comments by August 29, 2011.

(b) Affected ADs

None.

(c) Applicability

Pratt & Whitney Corp (PW) JT9D–7R4H1 turbofan engines with a high-pressure compressor (HPC) shaft, part numbers (P/Ns) 808070 or 808071, installed.

(d) Unsafe Condition

This AD was prompted by reports of cracks in five HPC shafts. We are issuing this AD to correct the unsafe condition on these products.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(f) Engines With an HPC Shaft, P/N 808071, That Has More Than 4,500 Cycles-Since-New (CSN)

For engines with an HPC shaft, P/N 808071, that has more than 4,500 CSN on the effective date of this AD, remove the HPC shaft from service within 500 cycles-in-service (CIS) after the effective date of the AD or at piece-part exposure, whichever occurs first.

(g) Engines With an HPC Shaft, P/N 808071, That Has 4,500 or Fewer CSN

For engines with an HPC shaft, P/N 808071, that has 4,500 or fewer CSN on the effective date of this AD, remove the HPC shaft from service before exceeding 5,000 CSN.

(h) Engines With an HPC Shaft, P/N 808070, Removal From Service

For engines with an HPC shaft, P/N 808070, remove the HPC shaft, P/N 808070, from service not later than 1,200 CSN.

(i) Installation Prohibition

After the effective date of this AD, do not install or reinstall into any engine:

- (1) Any HPC shaft, P/N 808071, that is at piece-part exposure and exceeds the new lower life limit of 5,000 CSN, or
- (2) Any HPC shaft, P/N 808070, that is at piece-part exposure and exceeds the new lower life limit of 1,200 CSN.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19.

(k) Related Information

For more information about this AD, contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7178; fax: 781–238–7199; e-mail: ian.dargin@faa.gov.

Issued in Burlington, Massachusetts, on July 7, 2011.

Peter A. White,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–17622 Filed 7–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0560; Airspace Docket No. 11–ANM–15]

Proposed Amendment of Class E Airspace; Glendive, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Dawson Community Airport, Glendive, MT, to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before August 29, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366-9826. You must identify FAA Docket No. FAA-2011-0560; Airspace Docket No. 11-ANM-15, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2011-0560 and Airspace Docket No. 11-ANM-15) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2011-0560 and Airspace Docket No. 11-ANM-15". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before

taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Dawson Community Airport, Glendive, MT. Controlled airspace is necessary to accommodate aircraft using the RNAV (GPS) standard instrument approach procedures at Dawson Community Airport. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Dawson Community Airport, Glendive, MT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and

effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Glendive, MT [Modify]

Glendive, Dawson Community Airport, MT (Lat. 47°08'19" N., long. 104°48'26" W.)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of the Dawson Community Airport, and within 4 miles northeast and 8.3 miles southwest of the 325° bearing from the Dawson Community Airport extending from the 10.5-mile radius to 16.1 miles northwest of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 47°38'00" N., long. 104°48'00" W.; to lat. 47°17'00" N., long. 104°05'00" W.; to lat. 46°54'00" N., long. 104°05'00" W.; to lat. 46°45'00" N., long. 105°09'00" W.; to lat. 47°00'00" N., long. 105°37'00" W.; to lat. 47°19'00" N., long. 105°15'00" W., thence to the point of beginning.

Issued in Seattle, Washington, on July 6, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011-17540 Filed 7-12-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2011-0517; Airspace Docket No. 11-AWP-7]

Proposed Establishment of Class E Airspace; Chinle, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Chinle Municipal Airport, Chinle, AZ to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Chinle Municipal Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at Chinle Municipal Airport. **DATES:** Comments must be received on or before August 29, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE.,

Washington, DC 20590; telephone (202) 366-9826. You must identify FAA Docket No. FAA-2011-0517; Airspace Docket No. 11-AWP-7, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011-0517 and Airspace Docket No. 11-AWP-7) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2011-0517 and Airspace Docket No. 11-AWP-7". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking

documents can also be accessed through the FAA's Web page at http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Chinle Municipal Airport, Chinle, AZ. Controlled airspace is necessary to accommodate aircraft using new RNAV (GPS) standard instrument approach procedures at Chinle Municipal Airport. This action would enhance the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a

significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Chinle Municipal Airport, Chinle, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Chinle, AZ [New]

Chinle Municipal Airport, AZ
(Lat. 36°06'34" N., long. 109°34'32" W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Chinle Municipal Airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 36°34'00" N., long. 110°00'00" W.; to lat. 36°38'00" N., long. 109°35'00" W.; to lat. 36°16'00" N., long. 109°02'00" W.; to lat. 36°04'00" N., long. 109°25'00" W.; to lat.

35°38'00" N., long. 110°01'00" W.; to lat. 36°19'00" N., long. 110°21'00" W., thence to the point of beginning.

Issued in Seattle, Washington, on July 6, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–17544 Filed 7–12–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 423

[RIN 3084–AB28]

Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: As part of the Commission’s systematic review of all current FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC’s Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended (“Care Labeling Rule” or “Rule”). The Commission also requests comment on whether it should modify the Rule’s provision permitting the use of care symbols or modify the Rule to address either the disclosure of care instructions in languages other than English or the practice of professional wetcleaning.

DATES: Written comments must be received on or before September 6, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Care Labeling Rule, 16 CFR Part 423, Project No. R511915” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/carelabelinganpr> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex A), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Robert M. Frisby, Attorney, Division of

Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2098.

SUPPLEMENTARY INFORMATION:

I. Background

The Rule makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating “what regular care is needed for the ordinary use of the product.”¹ The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions,² and allows the use of approved care symbols in lieu of words to disclose care instructions.³

The Commission promulgated the Rule in 1971, and has amended it three times since.⁴ In 1983, the Commission amended the Rule to clarify its requirements regarding the disclosure of washing and drycleaning information.⁵ In 1997, the Commission adopted a conditional exemption to allow the use of symbols in lieu of words.⁶ In 2000, the Commission amended the Rule to clarify what constitutes a reasonable basis for care instructions, and to change the Rule’s definitions of “cold,” “warm,” and “hot” water.⁷

At the same time it amended the Rule in 2000, the Commission rejected two amendments it had proposed earlier. First, the Commission decided not to require labels with instructions for home washing on items that one can safely clean by home washing. The Commission was not convinced that the evidence was sufficiently compelling to justify this change, and concluded that

¹ 16 CFR 423.5 and 423.6(a) and (b).

² 16 CFR 423.6(c).

³ The Rule provides that the symbol system developed by ASTM International, formerly the American Society for Testing and Materials, and designated as ASTM Standard D5489–96c “Guide to Care Symbols for Care Instructions on Consumer Textile Products” may be used on care labels or care instructions in lieu of terms so long as the symbols fulfill the requirements of Part 423. 16 CFR 423.8(g).

⁴ *Federal Trade Commission: Care Labeling of Textile Wearing Apparel: Promulgation of Trade Rule and Statement of Basis and Purpose*, 36 FR 23883 (Dec. 16, 1971).

⁵ *Federal Trade Commission: Amendment to Trade Regulation Rule Concerning Care Labeling of Textile Wearing Apparel and Certain Piece Goods*, 48 FR 22733 (May 20, 1983).

⁶ *Federal Trade Commission: Concerning Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods; Conditional Exemption from Terminology Section of the Care Labeling Rule*, 62 FR 5724 (Feb. 6, 1997).

⁷ *Federal Trade Commission: Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods, Final Amended Rule*, 65 FR 47261 (Aug. 2, 2000).

the benefits of the proposed change were highly uncertain.⁸ Second, the Commission decided not to establish a definition for “professional wetcleaning” or permit manufacturers to label a garment that one can professionally wetclean with a “Professionally Wetclean” instruction.⁹ The Commission stated that it was premature to allow such an instruction before the development of a suitable definition and an appropriate test method.¹⁰ The Commission added that it would consider such an instruction if a more specific definition and/or test procedure were developed which would provide manufacturers with a reasonable basis for a wetcleaning instruction.¹¹

The International Organization for Standardization (“ISO”) has now developed standards relating to wetcleaning.¹² These standards and other developments may warrant amendments to the Rule regarding wetcleaning.

Finally, ASTM International (“ASTM”) has developed ASTM D5489–07 “Standard Guide for Care Symbols for Care Instructions on Textile Products,” an updated version of the ASTM standard referenced in Section 423.8(g) of the Rule. As noted earlier, that section provides that the symbol system set forth in ASTM Standard D5489–96c “Guide to Care Symbols for Care Instructions on Consumer Textile Products” may be used on care labels or instructions in lieu of words. Some labels use symbols other than those allowed by the Rule. Further, some labels provide care instructions in English and other languages. These developments may warrant amendments regarding the use of symbols, such as updating the Rule to reference the latest ASTM standard, and disclosure of care instructions in multiple languages.

II. Regulatory Review Program

The Commission reviews its rules and guides periodically. These reviews seek information about the costs and benefits of the rules and guides as well as their

regulatory and economic impact. These reviews assist the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission now solicits comments on, among other things, the economic impact of, and the continuing need for, the Care Labeling Rule, the benefits of the Rule to consumers purchasing products covered by the Rule, and the burdens the Rule places on firms subject to its requirements.

III. Request for Comment

The Commission solicits comments on the following specific questions related to the Care Labeling Rule:

(1) Is there a continuing need for the Rule as currently promulgated? Why or why not?

(2) What benefits has the Rule provided to, or what significant costs has the Rule imposed on, consumers? Provide any evidence supporting your position.

(3) What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs to consumers?

(a) Provide any evidence supporting your proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(4) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? Provide any evidence supporting your position.

(5) What benefits, if any, has the Rule provided to, or what significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? Provide any evidence supporting your position.

(6) What modifications, if any, should be made to the Rule to increase its benefits or reduce its costs to businesses, particularly small businesses?

(a) Provide any evidence supporting your proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(7) Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(8) Provide any evidence concerning whether any of the Rule’s provisions are

no longer necessary. Explain why these provisions are unnecessary.

(9) What potentially unfair or deceptive practices concerning care labeling, not covered by the Rule, are occurring in the marketplace?

(a) Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrating the extent of such practices.

(b) Provide any evidence demonstrating whether such practices cause consumer injury.

(c) With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

(10) What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions?

(a) Provide any evidence supporting the proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(11) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) Provide any evidence supporting your position.

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Provide any evidence concerning whether the Rule has assisted in promoting national consistency with respect to care labeling.

(12) Are there foreign or international laws, regulations, or standards with respect to care labeling that the Commission should consider as it reviews the Rule? If so, what are they?

(a) Should the Rule be modified in order to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(c) Provide any evidence supporting your position.

(13) Should the Commission modify the Rule to address the use of professional wetcleaning? If so, why and how? If not, why not? Provide any evidence supporting your position.

(14) Should the Commission modify the Rule to address the development of ASTM D5489–07 “Standard Guide for Care Symbols for Care Instructions on Textile Products” or the use of symbols other than those set forth in the ASTM Standard D5489–96c “Guide to Care Symbols for Care Instructions on Consumer Textile Products”? If so, why

⁸ *Id.* at 47269.

⁹ The Commission proposed a definition of professional wetcleaning stating in part that it is “a system of cleaning by means of equipment consisting of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers.” *Id.* at 47271 n. 99.

¹⁰ *Id.* at 47272.

¹¹ *Id.* at 47273.

¹² These include ISO 3175–4: 2003, “Textiles—Professional care, drycleaning and wetcleaning of fabrics and garments—Part 4: Procedure for testing performance when cleaning and finishing using simulated wetcleaning” and ISO 3758: 2005, “Textiles—Care labelling code using symbols.”

and how? If not, why not? Provide any evidence supporting your position.

(15) Should the Commission modify the Rule to address disclosure of care instructions in languages other than English? If so, why and how? If not, why not? Provide any evidence supporting your position.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 6, 2011. Write "Care Labeling Rule, 16 CFR Part 423, Project No. R511915" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>.

As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹³ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion,

grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublish.commentworks.com/ftc/carelabelingnpr> by following the instructions on the Web-based form. If this Notice appears at <http://www.regulations.gov/#/home>, you also may file a comment through that Web site.

If you file your comment on paper, write "Care Labeling Rule, 16 CFR Part 423, Project No. R511915" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex A), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 6, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

List of Subjects in 16 CFR Part 423

Care labeling of textile wearing apparel and certain piece goods; Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2011–17512 Filed 7–12–11; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Notice Announcing Ten-Year Regulatory Review Schedule and Request for Public Comment on the Federal Trade Commission's Regulatory Review Program

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments, and request for information and comment.

SUMMARY: As part of its ongoing systematic review of all Federal Trade Commission rules and guides, the Commission announces a revised ten-year regulatory review schedule. No Commission determination on the need for, or the substance of, the rules and guides listed below should be inferred from the notice of intent to publish requests for comments. The Commission further invites written comments regarding the Commission's longstanding regulatory review program and how to improve the process.

DATES: Written comments must be submitted on or before September 6, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Regulatory Review Schedule" on your comment, and file your comment online at <https://ftcpublish.commentworks.com/ftc/regulatoryreviewschedule>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jock Chung, (202) 326–2984, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M-8102B, 600 Pennsylvania Ave., NW., Washington, DC 20580, regarding the regulatory review schedule. Further details about particular rules or guides may be obtained from the contact person listed below for the rule or guide.

SUPPLEMENTARY INFORMATION: In a rapidly changing marketplace, agency regulations can become outdated, ineffectual, and unduly burdensome. Therefore, it is important to systematically review regulations to ensure that they continue to achieve their intended goals without unduly burdening commerce. Since 1992, the FTC's regulatory review program has done just that. The Commission schedules its regulations and guides for review on a ten-year cycle; *i.e.*, all rules and guides are scheduled to be reviewed ten years after implementation and ten years after completion of a regulatory review. The Commission publishes this schedule annually, with adjustments in

¹³ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

response to public input, changes in the marketplace, and resource demands.

The FTC recently has accelerated review of three rules and a guide to account for changes in the marketplace and to reduce burdens on industry. Specifically, because of recent increases in the use of environmental marketing claims, in 2009 the Commission accelerated its review of its Guides for the Use of Environmental Marketing Claims, also known as the Green Guides, 16 CFR Part 260. In 2010, the Commission accelerated its reviews of the Children's Online Privacy Protection Rule, 16 CFR Part 312, to address rapid changes in technology and children's use of online media, and the Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles, 16 CFR Part 309, to address potentially unnecessary or duplicative labeling requirements and harmonize FTC rules with the rules of a sister agency. And most recently, the Commission announced a new Premerger Notification and Report Form, which was the result of an acceleration in 2010 of the review of the Hart-Scott-Rodino Antitrust Improvements Act ("HSR") Transmittal Rule, 16 CFR Part 803, to more rapidly alleviate any unnecessary burden on filers during these difficult economic times.

The Commission is now announcing acceleration of reviews of additional rules. First, the Commission is accelerating its review of portions of the HSR Coverage Rule, 16 CFR Part 801, from 2013 to 2011. Second, the Commission is accelerating review of the Appliance Labeling Rule, 16 CFR Part 305, from 2018 to 2012, to address rapid changes in appliance technology and the increasing cost of energy.

When the Commission reviews a rule or guide, it publishes a notice in the **Federal Register** seeking public comment on the continuing need for the rule or guide as well as the rule's or guide's costs and benefits to consumers and businesses. Based on this feedback, the Commission may modify or repeal the rule or guide to address public concerns or changed conditions, or to reduce undue regulatory burden. Using this process, the Commission has repealed 37 rules and guides, and updated dozens of others over the past two decades.

For the first time, this year the Commission is seeking input on ways to improve its regulatory review program and the procedure used for reviewing the agency's rules and guides. Through comments suggesting improvements to its systematic regulatory review, the Commission seeks to ensure it is implementing a review process that

accurately measures the effectiveness, efficiency, and consequences of its rules and guides in the face of changing marketplace conditions, evolving consumer behavior, and technological developments. To solicit such comments, this notice sets forth specific questions, and also invites all relevant information and suggestions. The Commission will analyze these comments and consider whether changes to its regulatory review process are warranted.

Revised Ten-Year Schedule for Review of FTC Rules and Guides

The Commission currently has ongoing reviews relating to thirteen of its rules and guides.¹ For example, currently, the Commission is considering amendments to the Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles, 16 CFR Part 309, that would harmonize FTC rules with Environmental Protection Agency rules and eliminate the need for businesses to apply two redundant labels from different agencies to covered vehicles.

For 2011, the Commission intends to initiate a review of, and solicit public comments on, the following ten additional rules and guides.

(1) *Guides for the Advertising of Warranties and Guaranties*, 16 CFR part 239. *Agency Contact:* Svetlana S. Gans, (202) 326–3708, Federal Trade Commission, Bureau of Consumer Protection, Division of Marketing Practices, 600 Pennsylvania Ave., NW., Washington, DC 20580.

(2) *Rules and Regulations under the Wool Products Labeling Act of 1939*, 16 CFR Part 300. *Agency Contact:* Robert M. Frisby, (202) 326–2098, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave., NW., Washington, DC 20580.

¹ Guides for Private Vocational and Distance Education Schools, 16 CFR Part 254; Guide Concerning Fuel Economy Advertising for New Automobiles, 16 CFR Part 259; Guides for the Use of Environmental Marketing Claims, 16 CFR Part 260; Automotive Fuel Ratings, Certification and Posting Rule, 16 CFR Part 306; Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 [Pay Per Call Rule], 16 CFR Part 308; Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles Rule, 16 CFR Part 309; Children's Online Privacy Protection Rule, 16 CFR Part 312; Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended Rule, 16 CFR Part 423; Use of Prenotification Negative Option Plans Rule, 16 CFR Part 425; Rule Concerning the Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 CFR Part 429; Mail or Telephone Order Merchandise Rule, 16 CFR Part 435; Disclosure Requirements and Prohibitions Concerning Business Opportunities Rule, 16 CFR Part 437; and Used Motor Vehicle Trade Regulation Rule, 16 CFR Part 455.

(3) *Rules and Regulations under the Fur Products Labeling Act*, 16 CFR Part 301. *Agency Contact:* Matthew J. Wilshire, (202) 326–2976, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave., NW., Washington, DC 20580.

(4) *Rules and Regulations under the Textile Fiber Products Identification Act*, 16 CFR Part 303. *Agency Contact:* Robert M. Frisby.

(5) *Retail Food Store Advertising and Marketing Practices Rule [Unavailability Rule]*, 16 CFR Part 424. *Agency Contact:* Jock Chung, (202) 326–2984, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave., NW., Washington, DC 20580.

(6) *Interpretations of Magnuson-Moss Warranty Act*, 16 CFR Part 700. *Agency Contact:* Svetlana S. Gans.

(7) *Disclosure of Written Consumer Product Warranty Terms and Conditions*, 16 CFR Part 701. *Agency Contact:* Svetlana S. Gans.

(8) *Pre-Sale Availability of Written Warranty Terms*, 16 CFR Part 702. *Agency Contact:* Svetlana S. Gans.

(9) *Informal Dispute Settlement Procedures*, 16 CFR Part 703. *Agency Contact:* Svetlana S. Gans.

(10) *[Hart-Scott-Rodino Antitrust Improvements Act] Coverage Rules*, 16 CFR Part 801. *Agency Contact:* Robert Jones, (202) 326–2740, Federal Trade Commission, Bureau of Competition, 600 Pennsylvania Ave., NW., Washington, DC 20580.

Due to resource constraints, the Commission is postponing review of the following matters previously scheduled for 2011 review: Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 CFR part 14; the Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR part 23; the Preservation of Consumers' Claims and Defenses Rule [Holder in Due Course Rule], 16 CFR Part 433; and the Credit Practices Rule, 16 CFR part 444.

The Commission is removing the following nine matters from its regulatory review schedule because authority to modify or repeal them will be transferred to the Consumer Financial Protection Bureau (CFPB) in 2011: Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance, 16 CFR Part 320; Mortgage Assistance Relief Services Rule, 16 CFR part 322; Statements of General Policy or Interpretations [of the Fair Credit Reporting Act Rules], 16 CFR Part 600; [Identity Theft] Definitions, 16 CFR Part 603; Free Annual File Disclosures Rule, 16 CFR Part 610;

Prohibition Against Circumventing Treatment as a Nationwide Consumer Reporting Agency, 16 CFR Part 611; Duration of Active Duty Alerts, 16 CFR Part 613; Appropriate Proof of Identity, 16 CFR Part 614; and Procedures for State Application for Exemption From the Provisions of the [Federal Debt Collection Practices] Act, 16 CFR Part 901.²

Finally, the Commission is removing Smokeless Tobacco Regulations, 16 CFR Part 307, from its review schedule because the Commission rescinded these regulations in 2010. 75 FR 59609 (September 28, 2010).

A copy of the Commission's revised regulatory review schedule for 2011 through 2020 is appended. The Commission, in its discretion, may modify or reorder the schedule in the future to incorporate new rules, or to respond to external factors (such as changes in the law) or other considerations.

Request for Comment

Questions

We invite comment to help the Commission continue to improve its regulatory review process. All relevant comments will be considered, but we are particularly interested in obtaining your views on the following questions. When responding, please include any available evidence that supports your response.

(1) Should the Commission continue to review its rules and guides every ten years? If not, what interval makes sense? Why?

(2) Should different rules and guides be reviewed at different intervals? If so, which should be accelerated and which decelerated and on what basis?

(3) In what other ways can the Commission modify its regulatory review program to make it more responsive to the needs of consumers and businesses?

(4) What can the Commission do to streamline its regulatory review process?

(5) Are there any federal, state, or foreign agencies with regulatory review programs that the Commission should study to improve its own program? If so which agencies, and what do they do that is superior to the Commission's program?

(6) How should the Commission identify those rules and guides that can and should be modified, streamlined, expanded, or repealed? What factors should the Commission consider in selecting and prioritizing rules and guides for review? Why?

(7) Does the Commission have rules or guides that duplicate or conflict with other agencies' requirements? Does the Commission currently collect information that it does not need or use effectively to achieve regulatory objectives? If so, what information is not needed? Why not?

(8) Are there rules or guides that have become unnecessary and can be withdrawn without impairing the Commission's regulatory programs? If so, which rules and guides? Why?

(9) Are there rules or guides that have become outdated and, if so, how can they be modernized to better accomplish their regulatory objectives? If so, which rules and guides? Why are they outdated?

(10) Are there rules or guides that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified? If so, which rules and guides? Why and how should they be changed?

(11) Are there rules or guides that have been or will soon be overtaken by technological developments? If so, which rules or guides? Why? How can they be modified to accommodate or utilize such technologies?

Instructions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 6, 2011. Write "Regulatory Review Schedule" on your comment. Your comment including your name and your state will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal

information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any [t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).³ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublishcommentworks.com/ftc/regulatoryreviewschedule>, by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write "Regulatory Review Schedule" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The

² These nine matters transfer to CFPB pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, Sec. 1061(b)(5), 124 Stat. 2004 (July 21, 2010). To the extent they apply to motor vehicle dealers, the Commission will retain rulemaking authority for seven other rules that are being transferred to the CFPB pursuant to sections 1029(a) and (c) of the Act: Privacy of Consumer Financial Information Privacy Rule, 16 CFR Part 313; Duties of Creditors Regarding Risk-Based Pricing, 16 CFR Part 640; Duties of Users of Consumer Reports Regarding Address Discrepancies, 16 CFR Part 641; Prescreen Opt-Out Notice, 16 CFR Part 642; Duties of Furnishers of Information to Consumer Reporting Agencies, 16 CFR Part 660; Affiliate Marketing, 16 CFR Part 680; Model Forms and Disclosures, 16 CFR Part 698.

³ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR Part 4.9(c).

FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive

public comments that it receives on or before September 6, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Authority: 15 U.S.C. 41–58.
By direction of the Commission.
Donald S. Clark,
Secretary.

APPENDIX—REGULATORY REVIEW MODIFIED TEN-YEAR SCHEDULE

16 CFR Part	Topic	Year to review
254	Guides for Private Vocational and Distance Education Schools	Under Review.
259	Guide Concerning Fuel Economy Advertising for New Automobiles	Under Review.
260	Guides for the Use of Environmental Marketing Claims	Under Review.
306	Automotive Fuel Ratings, Certification and Posting Rule	Under Review.
308	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 [Pay Per Call Rule]	Under Review.
309	Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles Rule	Under Review.
312	Children's Online Privacy Protection Rule	Under Review.
423	Care Labeling of Textile Wearing Apparel and Certain Piece Goods Rule	Under Review.
425	Use of Prenotification Negative Option Plans Rule	Under Review.
429	Rule Concerning the Cooling-Off Period for Sales Made at Homes or at Certain Other Locations	Under Review.
435	Mail or Telephone Order Merchandise Rule	Under Review.
437	Disclosure Requirements and Prohibitions Concerning Business Opportunities Rule	Under Review.
455	Used Motor Vehicle Trade Regulation Rule	Under Review.
239	Guides for the Advertising of Warranties and Guarantees	2011.
300	Rules and Regulations under the Wool Products Labeling Act of 1939	2011.
301	Rules and Regulations under Fur Products Labeling Act	2011.
303	Rules and Regulations under the Textile Fiber Products Identification Act	2011.
424	Retail Food Store Advertising and Marketing Practices Rule [Unavailability Rule]	2011.
700	Interpretations of Magnuson-Moss Warranty Act	2011.
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	2011.
702	Pre-Sale Availability of Written Warranty Terms	2011.
703	Informal Dispute Settlement Procedures	2011.
801	[Hart-Scott-Rodino Antitrust Improvements Act] Coverage Rules	2011.
20	Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry	2012.
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	2012.
233	Guides Against Deceptive Pricing	2012.
238	Guides Against Bait Advertising	2012.
251	Guide Concerning Use of the Word "Free" and Similar Representations	2012.
240	Guides for Advertising Allowances and Other Merchandising Payments and Services	2012.
305	Appliance Labeling Rule	2012.
433	Preservation of Consumers' Claims and Defenses Rule [Holder in Due Course Rule]	2012.
310	Telemarketing Sales Rule	2013.
500	Regulations under Section 4 of the Fair Packaging and Labeling Act	2013.
501	Exemptions from Requirements and Prohibitions under Part 500 [of the Fair Packaging and Labeling Act]	2013.
502	Regulations under Section 5(c) of the Fair Packaging and Labeling Act	2013.
503	Statements of General Policy or Interpretation [under the Fair Packaging and Labeling Act]	2013.
802	[Hart-Scott-Rodino Antitrust Improvements Act] Exemption Rules	2013.
304	Rules and Regulations under the Hobby Protection Act	2014.
314	Standards for Safeguarding Customer Information	2014.
315	Contact Lens Rule	2015.
316	CAN-SPAM Rule	2015.
456	Ophthalmic Practice Rules (Eyeglass Rule)	2015.
460	Labeling and Advertising of Home Insulation	2016.
682	Disposal of Consumer Report Information and Records	2016.
410	Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets	2017.
18	Guides for the Nursery Industry	2018.
311	Test Procedures and Labeling Standards for Recycled Oil	2018.
436	Disclosure Requirements and Prohibitions Concerning Franchising	2018.
681	Identity Theft [Red Flag] Rules	2018.
24	Guides for Select Leather and Imitation Leather Products	2019.
453	Funeral Industry Practices Rule	2019.
14	Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements	2020.
255	Guides Concerning Use of Endorsements and Testimonials in Advertising	2020.
313	Privacy of Consumer Financial Information Rule	2020.
317	Prohibition of Energy Market Manipulation Rule	2020.
318	Health Breach Notification Rule	2020.
432	Power Output Claims for Amplifiers Utilized in Home Entertainment Products Rule	2020.
444	Credit Practices Rule	2020.
640	Duties of Creditors Regarding Risk-Based Pricing	2020.
641	Duties of Users of Consumer Reports Regarding Address Discrepancies	2020.
642	Prescreen Opt-Out Notice	2020.
660	Duties of Furnishers of Information to Consumer Reporting Agencies	2020.
680	Affiliate Marketing	2020.

APPENDIX—REGULATORY REVIEW MODIFIED TEN-YEAR SCHEDULE—Continued

16 CFR Part	Topic	Year to review
698	Model Forms and Disclosures	2020.
803	[Hart-Scott-Rodino Antitrust Improvements Act] Transmittal Rules	2020.

[FR Doc. 2011–17513 Filed 7–12–11; 8:45 am]

BILLING CODE 6750–01–P

SUSQUEHANNA RIVER BASIN COMMISSION**18 CFR Part 806****Review and Approval of Projects****AGENCY:** Susquehanna River Basin Commission.**ACTION:** Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to: Include definitions for new terms that are used in the proposed rulemaking; provide for administrative approval of interbasin transfers of flowback and production fluids between drilling pad sites that are isolated from the waters of the basin; provide for administrative approval of out-of-basin transfers of flowback or produced fluids from a Commission approved hydrocarbon development project to an out-of-basin treatment or disposal facility; insert language authorizing “renewal” of expiring approvals, including Approvals by Rule (ABRs); delete specific references to geologic formations that may be the subject of natural gas development using hydrofracture stimulation and replace with a generic category—“unconventional natural gas development;” broaden the scope of ABRs issued to include hydrocarbon development of any kind utilizing the waters of the basin, not just unconventional natural gas well development; memorialize the current practice of requiring post-hydrofracture reporting; standardize at 15 years the term of ABR approvals for both gas and non-gas projects; and provide further procedures for the approval of water sources utilized at projects subject to the ABR process.

DATES: Comments on these proposed rules may be submitted to the Commission on or before August 23, 2011. The Commission has scheduled two public hearings on the proposed rules, to be held August 2, 2011, in Harrisburg, Pennsylvania, and August 4,

2011, in Binghamton, New York. The locations of the public hearings are listed in the addresses section of this notice.

ADDRESSES: Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391, or by e-mail to rcairo@srbc.net.

The public hearings will be held on Tuesday, August 2, 2011, at 10 a.m., at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, and on Thursday, August 4, 2011 at 7 p.m., at the Holiday Inn Binghamton Downtown, 2–8 Hawley Street, Binghamton, New York 13901. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: 717–238–0423, ext. 306; fax: 717–238–2436; e-mail: rcairo@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission’s Web site at <http://www.srbc.net>.

SUPPLEMENTARY INFORMATION:**Background and Purpose of Amendments**

The basic purpose of the regulatory amendments set forth in this proposed rulemaking is to make further modifications to the Commission’s project review regulations, most of which relate to the approval of hydrocarbon development projects.

New terms are used in these amendments that require further definition in 18 CFR 806.3. These include definitions for the terms flowback, formation fluids, hydrocarbon development, hydrocarbon water storage facility, production fluids, tophole water, and unconventional natural gas development.

In order to encourage the reuse of least quality water instead of fresh water for hydraulic fracturing by unconventional natural gas development, the Commission proposes to add paragraph (a)(3)(iv) to § 806.4, which would provide for administrative approval of diversions involving flowback or production fluids from hydrocarbon development projects being transferred across the basin

boundary from one drilling pad site to another drilling pad site, provided this water is handled in a manner that isolates it from the waters of the basin. Such diversions would be approved administratively under the provisions of § 806.22(f), rather than § 806.4. This change would incorporate into the regulation a policy adopted by the Commission on March 10, 2011.

To encourage reuse, treatment and proper disposal, paragraph (a)(3)(v) of § 806.4 would also be added, which would provide for diversions involving flowback or production fluids transferred to an out-of-basin treatment or disposal facility operating under separate governmental approval to be subject to administrative approval under the provisions of § 806.22(f), rather than being subject to docket approval under § 806.4.

Currently, § 806.4(a)(8) states that natural gas well development projects targeting the Marcellus and Utica shale formation, or any other shale formations identified in an Executive Director determination, involving a withdrawal, diversion or consumptive use of water in any quantity, must be approved by the Commission. Rather than attempting to name every possible geologic formation that may be the subject of development using hydrofracture stimulation (beyond Marcellus and Utica and the additional formations referenced in the Executive Director’s recent Notice of Determination issued on April 21, 2011), the specific formation references would be deleted and replaced with a generic category—“unconventional natural gas development,” which relates to the extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation and recovery techniques. The “gallon one” regulatory threshold currently applicable under the regulations to gas well development in the specifically named formations would instead be extended to this broader category.

Language is inserted into §§ 806.13 and 14 authorizing “renewal” of expiring approvals, including Approvals by Rule (ABRs). Currently, the regulations have no specific reference to a “renewal” process for expiring approvals. Renewals are also provided for in additions to § 806.22(e)(6) and (f)(9).

Adjustments are made to § 806.15—Notice of Application to account for changes and additions to § 806.22(f) described below relating to source registrations and administrative approvals of sources.

Currently, § 806.22(f) establishes an ABR process for consumptive use approvals related to natural gas well development. The Commission proposes to broaden the scope of ABRs issued under § 806.22(f) to include hydrocarbon development of any kind utilizing the waters of the basin, not just unconventional natural gas well development. Rather than requiring such projects to go through review and docket approval under § 806.4, they would be regulated under the administrative ABR process for consumptive use approvals, which has become a very effective mechanism for managing this type of activity. The inclusion of “unconventional natural gas well development” as a subcategory of hydrocarbon development retains coverage of well development using unconventional stimulation or recovery techniques such as hydraulic fracturing under the ABR process.

Proposed § 806.22(f)(4) would clarify that post-hydrofracture reporting is intended to be included in the metering, daily use monitoring and quarterly reporting requirement specified in § 806.30. This would memorialize an ongoing practice of the Commission.

Proposed § 806.22(f)(8) would broaden the certification provided by project sponsors on their compliance with state and federal laws to include “re-use” as well as treatment and disposal of flowback and production fluids.

Revised § 806.22(f)(9) would extend the concept of “renewal” to an existing ABR, where it is not explicitly mentioned in the current regulations.

The current regulations only provide a 4-year duration for natural gas development project ABRs. This relatively short approval term was implemented to give the Commission a near-term opportunity to evaluate the use of an administrative approval process for natural gas-related consumptive use activity. Revised § 806.22(f)(10) would extend the term of an approval by rule from 4 years to 15 years from the date of notification by the Executive Director, reflecting the knowledge and experience gained by the Commission in reviewing natural gas development projects. A 15-year term is the standard approval term for all other ABRs.

Water source approvals under the hydrocarbon development ABR program are restructured in three ways. First,

language would be inserted in § 806.22(f)(11) to identify water sources that are authorized for use by operation of the rule, rather than by separate approval. These sources would continue to be subject to tracking, recordkeeping and reporting requirements. The existing provisions of § 806.22(f)(12) would be split apart, resulting in revised language and the creation of a new § 806.22(f)(13). As revised, § 806.22(f)(12) sets out the registration procedure for hydrocarbon developers to use a source of water approved by the Commission pursuant to § 806.4(a) and issued to persons other than the project sponsor. The new § 806.22(f)(13) authorizes approvals for sources, including, but not limited to public water supplies, wastewater, and hydrocarbon water storage facilities not otherwise associated with docket approvals issued by the Commission or ABRs issued by the Executive Director. By issuing approvals for such hydrocarbon water storage facilities, a tracking mechanism would be created authorizing use of these sources by operation of the rule, rather than needing individual registrations or approvals. Such an approach provides the necessary management controls.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR Part 806 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

2. Amend § 806.3 by adding definitions for “Flowback”, “Formation fluids”, “Hydrocarbon development”, “Production fluids”, “Project”, “Tophole water”, and “Unconventional natural gas development” to read as follows:

§ 806.3 Definitions.

* * * * *

Flowback. The return flow of water and formation fluids recovered from the well bore of an unconventional natural gas or hydrocarbon development well within 30 days following the release of pressures induced as part of the hydraulic fracture stimulation of a target geologic formation, or until the well is

placed into production, whichever occurs first.

Formation fluids. Fluids in a liquid or gaseous physical state, present within the pore spaces, fractures, faults, vugs, caverns, or any other spaces of formations, whether or not naturally occurring or injected therein.

* * * * *

Hydrocarbon development. Activity associated with the siting, drilling, casing, cementing, stimulation and completion of wells, including but not limited to unconventional natural gas development wells, undertaken for the purpose of extraction of liquid or gaseous hydrocarbon from geologic formations.

Hydrocarbon water storage facility. An engineered barrier or structure, including but not limited to tanks, pits or impoundments, constructed for the purpose of storing water, flowback or production fluids for use in hydrocarbon development.

* * * * *

Production fluids. Water or formation fluids recovered at the wellhead of a producing hydrocarbon well as a by-product of the production activity.

Project. Any work, service, activity, or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation. For purposes of hydrocarbon development activity, the project shall be considered to be the drilling pad upon which one or more exploratory or production wells are undertaken, and all water-related appurtenant facilities and activities related thereto.

* * * * *

Tophole water. Groundwater that is encountered collected at the surface during drilling operations undertaken in conjunction with hydrocarbon development.

Unconventional natural gas development. Activity associated with the siting, drilling, casing, cementing, stimulation and completion of wells undertaken for the purpose of extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation or recovery techniques.

* * * * *

3. In § 806.4, revise paragraph (a)(3) introductory text, add paragraphs

(a)(3)(v) and (a)(3)(vi), and revise paragraph (a)(8), as follows:

§ 806.4 Projects Requiring Review and Approval.

(a) * * *

(3) Diversions. Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1) of this section, the projects described in paragraphs (3)(i) through (3)(iv) below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. The projects identified in paragraphs (3)(v) and (3)(vi) below shall be subject to regulation pursuant to § 806.22(f).

* * * * *

(v) The interbasin diversion of any flowback or production fluids from hydrocarbon development projects from one drilling pad site to another drilling pad site for use in hydrofracture stimulation, and handled in such a manner as to isolate it from the waters of the basin, shall not be subject to separate review and approval as a diversion under this paragraph if the generating or receiving pad site is subject to an Approval by Rule issued pursuant to § 806.22(f).

(vi) The out-of-basin diversion of flowback or production fluids from a hydrocarbon development project for which an Approval by Rule has been issued pursuant to § 806.22(f), to an out-of-basin treatment or disposal facility authorized under separate governmental approval to accept the same, shall not be subject to separate review and approval as a diversion under this paragraph.

* * * * *

(8) Any unconventional natural gas development project in the basin involving a withdrawal, diversion or consumptive use, regardless of the quantity.

* * * * *

Subpart B—Application Procedure

4. Revise § 806.13, as follows:

§ 806.13 Submission of Application.

Project sponsors of projects subject to review and approval of the Commission under §§ 806.4, 806.5 or 806.6, or project sponsors seeking renewal of an existing approval of the Commission, shall submit an application and applicable fee to the Commission, in accordance with this subpart.

5. In § 806.14, revise paragraph (a), as follows:

§ 806.14 Contents of Application.

(a) Except with respect to applications to renew an existing Commission approval, applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission. Renewal applications shall include such information that the Commission determines to be necessary for the review of same, and shall likewise be submitted on forms and in the manner prescribed by the Commission.

* * * * *

6. In § 806.15, revise paragraphs (d), (e) and (f) and add paragraph (g), as follows:

§ 806.15 Notice of Application.

* * * * *

(d) For applications submitted under § 806.22(f)(13) for a public water supply source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in the area served by the public water supply.

(e) For applications submitted under § 806.22(f)(13) for a wastewater discharge source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in each area within which the water obtained from such source will be used for natural gas development.

(f) For applications submitted under § 806.22(f)(13) for a hydrocarbon water storage facility, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in the area in which the project is located.

(g) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the notifications to agencies of member States, municipalities and county planning agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of notice required hereunder for the

duration of the approval related to such notices.

Subpart C—Standards for Review and Approval

7. In § 806.22, revise paragraphs (e)(1), (e)(6), (f), (f)(1), (f)(4), (f)(8), (f)(9), (f)(10), (f)(11), and (f)(12), and add paragraph (f)(13), to read as follows:

§ 806.22 Standards for consumptive uses of water.

* * * * *

(e) * * *

(1) Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule.

* * * * *

(6) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

* * * * *

(f) Approval by rule for consumptive use related to unconventional natural gas and other hydrocarbon development.

(1) Any unconventional natural gas development project, or any hydrocarbon development project subject to review and approval under §§ 806.4, 806.5, or 806.6 of this part, shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

* * * * *

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water, including stimulation additives, flowback and production fluids, utilized by the project. The project sponsor shall also submit a post-hydrofracture report

in a form and manner as prescribed by the Commission.

* * * * *

(6) Any flowback or production fluids utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

* * * * *

(8) The project sponsor shall certify to the Commission that all flowback and production fluids have been re-used or treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule granted hereunder, and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a). Any sources of water approved pursuant to this section shall be further subject to any approval or authorization required by the member State.

(10) An approval by rule shall be effective upon written notification from the Executive Director to the project sponsor and shall expire 15 years from the date of such notification.

(11) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site:

(i) Water sources approved for use by the project sponsor for unconventional natural gas development, or hydrocarbon development, whichever is applicable, pursuant to § 806.4 or this section.

(ii) Tophole water encountered during the drilling process.

(iii) Precipitation or stormwater collected on the drilling pad site.

(iv) Flowback or production fluids obtained from a hydrocarbon water storage facility, provided it is used for hydrofracture stimulation only, and is handled in such a manner as to isolate it from the waters of the basin.

(v) Water obtained from a hydrocarbon water storage facility associated with an approval issued by the Commission pursuant to § 806.4(a) or by the Executive Director pursuant to this section.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water approved by the Commission pursuant to § 806.4(a) and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission. The project sponsor shall also provide a copy of same to the appropriate agency of the member State. The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered hereunder.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, public water supply, wastewater discharge, or a hydrocarbon water storage facility not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a) or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a form and in a manner as prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be subject to such monitoring and reporting requirements as may be contained therein.

Dated: July 1, 2011.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2011-17573 Filed 7-12-11; 8:45 am]

BILLING CODE 7040-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 118

[Docket No. FDA-2011-D-0398]

Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled “Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation” (the draft guidance). The draft guidance provides guidance to egg producers and other persons who are covered by FDA’s final rule entitled “Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation” (the final rule). The draft guidance contains questions FDA has received on the final rule since its publication and responses to those questions.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on the draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance by September 12, 2011.

ADDRESSES: Submit electronic comments on the draft guidance to <http://www.regulations.gov>. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the draft guidance to the Division of Plant and Dairy Food Safety/Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS-315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or fax your request to 301-436-2632. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT:

Nancy Bufano, Center for Food Safety and Applied Nutrition (HFS-316), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240-402-1493.

SUPPLEMENTARY INFORMATION:**I. Background**

In the **Federal Register** of July 9, 2009 (74 FR 33030), FDA issued a final rule requiring shell egg producers to implement measures to prevent *Salmonella* Enteritidis (SE) from contaminating eggs on the farm and from further growth during storage and transportation, and requiring these producers to maintain records concerning their compliance with the final rule and to register with FDA. This final rule became effective September 8, 2009, with a compliance date of July 9, 2010, for producers with 50,000 or more laying hens. For producers with fewer than 50,000, but at least 3,000 laying hens, the compliance date is July 9, 2012. The compliance date for persons who must comply with only the refrigeration requirements was July 9, 2010.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on how to interpret the requirements in the final rule, including questions and answers on compliance dates; coverage; definitions; SE prevention measures; sampling and testing for SE; registration; and compliance and enforcement. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR 118.5, 118.6, 118.10, and 118.11 have been approved under OMB control number 0910-0660.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to

send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at <http://www.fda.gov/RegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: July 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-17457 Filed 7-12-11; 8:45 am]

BILLING CODE 4160-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R03-OAR-2011-0092; FRL-9437-1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and a limited disapproval of a revision to the West Virginia State Implementation Plan (SIP) submitted by the State of West Virginia through the West Virginia Department of Environmental Protection (WVDEP) on June 18, 2008, that addresses regional haze for the first implementation period. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require states to prevent any future, and remedy any existing, anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program"). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of this SIP revision to implement the regional haze requirements for West Virginia on the basis that the revision, as a whole, strengthens the West Virginia SIP. Also in this action, EPA is proposing a limited disapproval of this same SIP revision because of the deficiencies in

the State's June 2008 regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR). EPA is also proposing to approve this revision as meeting the requirements of 110(a)(2)(D)(i)(II) and 110(a)(2)(J), relating to visibility protection for the 1997 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter (PM_{2.5}) NAAQS.

DATES: Comments must be received on or before August 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2011-0092 by one of the following methods

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:*
fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2011-0092, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2011-0092. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in

the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814-2096, or by e-mail at linden.melissa@epa.gov.

SUPPLEMENTARY INFORMATION: On June 18, 2008, the WVDEP submitted a revision to its SIP for Regional Haze.

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- VII. Statutory and Executive Order Reviews

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

I. What action is EPA proposing to take?

EPA is proposing a limited approval of West Virginia's June 18, 2008 SIP revision addressing regional haze because the revision as a whole strengthens the West Virginia SIP. EPA is also proposing to find that this revision meets the applicable visibility related requirements of CAA Section 110(a)(2) including, but not limited to 110(a)(2)(D)(i)(II) and 110(a)(2)(J), relating to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS. However, the West Virginia SIP relies on CAIR, an EPA rule, to satisfy key elements of the regional haze requirements. Due to the remand of CAIR, *see North Carolina v. EPA*, 531 F.3d 836 (DC Circuit 2008), the revision does not meet all of the applicable requirements of the CAA and EPA's regulations as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300-308. As a result, EPA is concurrently proposing a limited

disapproval of West Virginia's SIP revision. The revision nevertheless represents an improvement over the current SIP, and makes considerable progress in fulfilling the applicable CAA regional haze program requirements. This proposed rulemaking explains the basis for EPA's proposed limited approval and limited disapproval actions.

Under the CAA, sections 301(a) and 110(k)(6), and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I-X, September 7, 1992, (1992 Calcagni Memorandum) located at <http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf>. The deficiencies that EPA has identified as preventing a full approval of this SIP revision relate to the status and impact of CAIR on certain interrelated and required elements of the regional haze program. At the time the West Virginia regional haze SIP was being developed, the State's reliance on CAIR was fully consistent with EPA's regulations, *see* (70 FR 39104, 39142-4143, July 6, 2005). CAIR, as originally promulgated, requires significant reductions in emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) to limit the interstate transport of these pollutants, and the reliance on CAIR by affected states as an alternative to requiring BART for electrical generating units (EGUs) had specifically been upheld in *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333 (DC Circuit 2006). In 2008, however, the DC Circuit remanded CAIR back to EPA. *See North Carolina v. EPA*, 550 F.3d 1176. The court found CAIR to be inconsistent with the requirements of the CAA, *see North Carolina v. EPA*, 531 F.3d 896 (DC Circuit 2008), but ultimately remanded the rule to EPA without vacatur because it found that "allowing CAIR to remain in effect until it is replaced by a rule consistent with [the court's] opinion would at least temporarily preserve the environmental values covered by CAIR." *See North Carolina v. EPA*, 550 F.3d at 1178. In response to the court's decision, EPA has proposed a new rule to address interstate transport of NO_x and SO_x in the eastern United States. (75 FR 45210, Aug. 2, 2010) ("the Transport Rule"). EPA explained in that proposal that the Transport Rule, when finalized, will

replace CAIR and the CAIR Federal Implementation Plans (FIPs). In other words, the CAIR and CAIR FIP requirements, which were found to be illegal by the DC Circuit, will not remain in force after the Transport Rule requirements are in place. Given the status of CAIR, EPA is proposing to find that West Virginia may not rely on CAIR in its present form to provide reductions to satisfy the reasonable progress and BART requirements of the regional haze program.

While CAIR will not remain in effect indefinitely, it is currently in force. *See North Carolina v. EPA*, 550 F.3d 1176. By granting limited approval of West Virginia's regional haze SIP, EPA will allow the State to rely on the emissions reductions associated with CAIR for so long as CAIR is in place. We believe that this course of action is consistent with the court's intention to keep CAIR in place in order to "temporarily preserve the environmental values covered by CAIR." *Id.* at 1178.

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit PM_{2.5} (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., SO₂, NO_x, and in some cases, ammonia (NH₃) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter that impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. PM_{2.5} can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the "Interagency Monitoring of Protected Visual Environments" (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range¹ in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that

would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. (64 FR 35715, July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas² which impairment results from manmade air pollution." On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., "reasonably attributable visibility impairment." *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included

² Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager." 42 U.S.C. 7602(i). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.³ 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various Federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO is a collaborative effort of state governments, tribal governments, and various Federal Agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Southeastern United States. Member state and tribal governments include: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West

³ Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

¹ Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

Virginia, and the Eastern Band of the Cherokee Indians.

D. Interstate Transport for Visibility

Sections 110(a)(1) and 110(a)(2)(D)(i)(II) of the CAA require that within three years of promulgation of a NAAQS, a State must ensure that its SIP, among other requirements, “contains adequate provisions prohibiting any source or other types of emission activity within the State from emitting any air pollutant in amounts which will interfere with measures required to be included in the applicable implementation plan for any other State to protect visibility.” Similarly, section 110(a)(2)(f) requires that such SIP “meet the applicable requirements of part C of (Subchapter I) (relating to visibility protection).”

EPA’s 2006 Guidance, entitled “Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” recognized the possibility that a state could potentially meet the visibility portions of section 110(a)(2)(D)(i)(II) through its submission of a Regional Haze SIP, as required by sections 169A and 169B of the CAA. EPA’s 2009 guidance, entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),” recommended that a state could meet such visibility requirements through its Regional Haze SIP. EPA’s rationale supporting this recommendation was that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis. The common understanding was that, as a result of this collaborative environment, each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations under the Regional Haze Rule. This interpretation is consistent with the requirement in the Regional Haze Rule that a state participating in a regional planning process must include “all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.” 40 CFR 51.308(d)(3)(ii).

The regional haze program, as reflected in the Regional Haze Rule, recognizes the importance of addressing the long-range transport of pollutants for visibility and encourages states to work

together to develop plans to address haze. The regulations explicitly require each state to address its share of the emission reductions needed to meet the reasonable progress goals for neighboring Class I areas. States working together through a regional planning process, are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. 40 CFR 51.308(d)(3)(ii). Given these requirements, appropriate regional haze SIPs will contain measures that will achieve these emissions reductions and will meet the applicable visibility related requirements of section 110(a)(2).

As a result of the regional planning efforts in the VISTAS, all states in the VISTAS region contributed information used in the analysis of the causes of haze, and the levels of contribution from all sources within each state to the visibility degradation of each Class I area. The VISTAS States consulted in the development of reasonable progress goals. The modeling done by VISTAS relied on assumptions regarding emissions over the relevant planning period and embedded in these assumptions were anticipated emissions reductions in each of the states in VISTAS, including reductions from BART and other measures to be adopted as part of the State’s long term strategy for addressing regional haze. The reasonable progress goals in the regional haze SIPs that have been prepared by the states in the VISTAS region are based, in part, on the emissions reductions from nearby states that were agreed on through the VISTAS process.

West Virginia submitted a Regional Haze SIP on June 18, 2008, to address the requirements of the Regional Haze Rule. On December 3, 2007, West Virginia submitted its original 1997 Ozone NAAQS infrastructure SIP. On April 3, 2008, West Virginia submitted a 1997 PM_{2.5} NAAQS infrastructure SIP. On May 21, 2008, West Virginia submitted amendments to the 1997 Ozone and PM_{2.5} NAAQS infrastructure submittal. On October 1, 2009, West Virginia submitted a 2006 PM_{2.5} NAAQS infrastructure SIP. In the October 1, 2009 submittal, West Virginia indicated that its Regional Haze SIP would meet the requirements of the CAA, section 110(a)(2)(D)(i)(II), regarding visibility for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS. West Virginia also indicated it will meet the visibility requirements of 110(a)(2)(f), and specifically references the Regional Haze SIP submitted in June. EPA has reviewed West Virginia’s Regional Haze SIP and, as explained in section VI of

this action, proposes to find that West Virginia’s Regional Haze submittal meets the portions of the requirements of the CAA sections 110(a)(2) relating to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS.

III. What are the requirements for regional haze SIPs?

A. The CAA and the RHR

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA’s implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.⁴

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure “reasonable progress” toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic

⁴ The preamble to the RHR provides additional details about the deciview. (64 FR 35714–35725, July 1, 1999).

air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (“best”) and 20 percent most impaired (“worst”) visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions in documents titled, EPA’s *Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule*, September 2003, (EPA–454/B–03–005 located at http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf), (hereinafter referred to as “EPA’s 2003 Natural Visibility Guidance”) and *Guidance for Tracking Progress Under the Regional Haze Rule*, September 2003, (EPA–454/B–03–004 located at http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf), (hereinafter referred to as “EPA’s 2003 Tracking Progress Guidance”).

For the first regional haze SIPs that were due by December 17, 2007, “baseline visibility conditions” were the starting points for assessing “current” visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility

conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the “best” and one for the “worst” days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for “reasonable progress” toward achieving natural (i.e., “background”) visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA’s RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA’s *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program*, (“EPA’s Reasonable Progress Guidance”), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the “uniform rate of progress” or the “glidepath”) and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by

the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (“Class I state”) must also consult with potentially “contributing states,” i.e., other nearby states with emission sources that may be affecting visibility impairment at the Class I state’s areas. See 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources⁵ built between 1962 and 1977 procure, install, and operate the “Best Available Retrofit Technology” as determined by the state. Under the RHR, states are directed to conduct BART determinations for such “BART-eligible” sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the “BART Guidelines”) to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source

⁵ The set of “major stationary sources” potentially subject to BART is listed in CAA section 169A(g)(7).

in the BART determination process. The most significant visibility impairing pollutants are SO₂, NO_x, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH₃ compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described as "BART-eligible sources" in the RHR and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. See CAA section 169(g)(4); see 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative

program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. See 70 FR 39104 (July 6, 2005). EPA's regulations provide that states participating in the CAIR cap-and-trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR FIP in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO₂ and NO_x. See 40 CFR 51.308(e)(4). Since CAIR is not applicable to emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include "enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals" for all Class I areas within, or affected by emissions from, the state. See 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. See 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into

account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. See 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal Areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through "participation" in the IMPROVE network, (i.e., review and use of monitoring data from the network). The monitoring strategy is due with the first

regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. See 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any

public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is the relationship of the CAIR to the regional haze requirements?

A. Overview of EPA's CAIR

CAIR, as originally promulgated, requires 28 states and the District of Columbia to reduce emissions of SO₂ and NO_x that significantly contribute to, or interfere with maintenance of, the NAAQS for fine particulates and/or ozone in any downwind state. See 70 FR 25162 (May 12, 2005). CAIR establishes emission budgets or caps for SO₂ and NO_x for states that contribute significantly to nonattainment in downwind states and requires the significantly contributing states to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO₂, NO_x-annual, and NO_x-ozone season emissions.

B. Remand of the CAIR

On July 11, 2008, the DC Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. See *North Carolina v. EPA*, 531 F.3d 836 (DC Circuit 2008). However, in response to EPA's petition for rehearing, the court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. The court thereby left the EPA CAIR rule and CAIR SIPs and FIPs in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the court's opinion. See *North Carolina v. EPA*, 550 F.3d at 1178. The court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for

completing that action. Because CAIR accordingly has been remanded to the Agency without vacatur, CAIR and the CAIR FIPs are currently in effect in subject states.

C. Regional Haze SIP Elements Potentially Affected by the CAIR Remand

The following is a summary of the elements of the regional haze SIPs that are potentially affected by the remand of CAIR. Many states relied on CAIR as an alternative to BART for SO₂ and NO_x for subject EGUs, as allowed under the BART provisions at 40 CFR 51.308(e)(4). Additionally, several states established RPGs that reflect the improvement in visibility expected to result from controls planned for or already installed on sources within the state to meet the CAIR provisions for this implementation period for specified pollutants. Many states relied upon their own CAIR SIPs or the CAIR FIPs for their states to provide the legal requirements which leads to these planned controls, and did not include enforceable measures in the LTS in the regional haze SIP submission to ensure these reductions. States also submitted demonstrations showing that no additional controls on EGUs beyond CAIR would be reasonable for this implementation period. Due to EPA's need to address the concerns of the court as outlined in its decision remanding CAIR, EPA believes it would be inappropriate to fully approve states' LTSs that rely upon the emissions reductions predicted to result from CAIR to meet the BART requirement for EGUs or to meet the RPGs in the states' regional haze SIPs. For this reason, EPA cannot fully approve regional haze SIP revisions that rely on CAIR for emission reduction measures. EPA therefore proposes to grant limited approval and limited disapproval of the West Virginia SIP. The next section discusses how the Agency proposes to address these deficiencies.

D. Rationale and Scope of Proposed Limited Approval

EPA is intending to propose to issue limited approvals of those regional haze SIP revisions that rely on CAIR to address the impact of emissions from a state's own EGUs. Limited approval results in approval of the entire regional haze submission and all its elements. EPA is taking this approach because an affected state's SIP will be stronger and more protective of the environment with the implementation of those measures by the state and having Federal approval and enforceability than it would

without those measures being included in the state's SIP.

EPA also intends to propose to issue limited disapprovals for regional haze SIP revisions that rely on CAIR concurrently with the proposals for limited approval. As explained in the 1992 Calcagni Memorandum, "[t]hrough a limited approval, EPA [will] concurrently, or within a reasonable period of time thereafter, disapprove the rule * * * for not meeting all of the applicable requirements of the CAA * * * [T]he limited disapproval is a rulemaking action, and it is subject to notice and comment." Final limited disapproval of a SIP submittal does not affect the Federal enforceability of the measures in the subject SIP revision nor prevent state implementation of these measures. The legal effects of the final limited disapproval are to provide EPA the authority to issue a FIP at any time, and to obligate the Agency to take such action no more than two years after the effective date of the final limited disapproval action.

V. What is EPA's analysis of West Virginia's regional haze submittal?

On June 18, 2008, WVDEP submitted revisions to the West Virginia SIP to address regional haze in the State's Class I areas as required by EPA's RHR.

A. Affected Class I Areas

West Virginia has two Class I areas within its borders: Dolly Sods Wilderness Area and Otter Creek Wilderness Area. West Virginia determined the appropriate RPGs, including consulting with other states that impact these two Class I areas. West Virginia is responsible for describing its own long-term emission strategies, its role in the consultation processes, and how its particular state SIP meets the other requirements in EPA's regional haze regulations.

The West Virginia regional haze SIP establishes RPGs for visibility improvement at each of these Class I areas and a LTS to achieve those RPGs within the first regional haze implementation period ending in 2018. In developing the LTS for each area, West Virginia considered both emission sources inside and outside the state that may cause or contribute to visibility impairment in West Virginia's Class I areas. The State also identified and considered emission sources within West Virginia that may cause or contribute to visibility impairment in Class I areas in neighboring states as required by 40 CFR 51.308(d)(3). The VISTAS RPO worked with the State in developing the technical analyses used to make these determinations, including

state-by-state contributions to visibility impairment in specific Class I areas, which included the two areas in West Virginia and those areas affected by emissions from West Virginia.

B. Determination of Baseline, Natural, and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, West Virginia calculated baseline/current and natural visibility conditions for each of its Class I areas, as summarized below.

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in EPA's 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in EPA's 2003 Natural Visibility Guidance, EPA allows states to use "refined" or alternative approaches to 2003 EPA guidance to estimate the values that characterize the natural visibility conditions of the Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the "new IMPROVE equation" that was adopted for use by the IMPROVE Steering Committee in December 2005.⁶ The purpose of this refinement to the "old IMPROVE equation" is to provide more accurate estimates of the various factors that affect the calculation of light extinction. West Virginia opted to use the default estimates for the natural concentrations combined with the "new IMPROVE equation," for all of its areas. Using this approach, natural visibility conditions using the new IMPROVE

⁶ The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

equation were calculated separately for each Class I area by VISTAS.

The new IMPROVE equation takes into account the most recent review of the science⁷ and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Conditions

The Otter Creek Wilderness Area does not contain an IMPROVE monitor. In cases where onsite monitoring is not available, 40 CFR 51.308(d)(2)(i) requires states to use the most representative monitoring available for the 2000–2004 period to establish baseline visibility conditions, in consultation with EPA. West Virginia used and EPA concurs with the use of 2000–2004 data from the IMPROVE monitor at Dolly Sods Wilderness Area for the Otter Creek Wilderness Area. The Dolly Sods Wilderness Area is nearest to the Otter Creek Wilderness Area and the areas possess similar characteristics, such as meteorology and topography.

WVDEP estimated baseline visibility conditions at both West Virginia Class I

⁷ The science behind the revised IMPROVE equation is summarized in Appendix B.2 of the West Virginia Regional Haze submittal and in numerous published papers. See for example: Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report*. March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado. http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm; and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates*. Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006 http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.

areas using available monitoring data from a single IMPROVE monitoring site in the Dolly Sods Wilderness Area. For the first regional haze SIP, baseline visibility conditions are the same as current conditions. A five-year average of the 2000 to 2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days at each West Virginia Class I area. IMPROVE data records for Dolly Sods Wilderness Area for the period 2000 to

2004 meet the EPA requirements for data completeness, see page 2–8 of EPA’s 2003 Tracking Progress Guidance. This data is also provided at the following Web site: http://www.metro4-sesarm.org/vistas/SesarmBext_20BW.htm.

3. Summary of Baseline and Natural Conditions

For the West Virginia Class I areas, baseline visibility conditions on the 20

percent worst days are approximately 30 deciviews (dv). Natural visibility in these areas is predicted to be approximately 11 deciviews on the 20 percent worst days. The natural and baseline conditions for West Virginia’s Class I areas for both the 20 percent worst and best days are presented in Table 1, below.

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR THE WEST VIRGINIA CLASS I AREAS

Class I area	Average for 20% worst days (dv) ⁹	Average for 20% best days (dv)
Natural Background Conditions		
Dolly Sods Wilderness Area	10.4	3.6
Otter Creek Wilderness Area	10.4	3.6
Baseline Visibility Conditions (2000–2004)		
Dolly Sods Wilderness Area	29.0	12.3
Otter Creek Wilderness Area	29.0	12.3

⁹EPA’s TSD to this action, entitled, “Technical Support Document for the Modeling Portions of the State of West Virginia’s Regional Haze State Implementation Plan (SIP)” is included in the public docket for this action.

4. Uniform Rate of Progress

In setting the RPGs, West Virginia considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (“glidepath”) and the emission reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA’s Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater, lesser, or equivalent to the glidepath.

The State’s implementation plan presents a graph for the 20 percent worst days, for its two Class I areas. West Virginia constructed the graph for the worst days (i.e., the glidepath) in accordance with EPA’s 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for its two areas. West Virginia’s SIP shows that the State’s RPGs for its areas provide for improvement in visibility for the 20 percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best days over the same period, in accordance with 40 CFR 51.308(d)(1).

For the West Virginia Class I areas, the overall visibility improvement necessary to reach natural conditions is

the difference between baseline visibility of 29.0 deciviews for the 20 percent worst days and natural conditions of 10.4 deciviews, i.e., 18.6 deciviews. Over the 60-year period from 2004 to 2064, this would require an average improvement of 0.31 deciviews per year to reach natural conditions. Hence, for the 14-year period from 2004 to 2018, in order to achieve visibility improvements at least equivalent to the uniform rate of progress for the 20 percent worst days at Dolly Sods Wilderness Area and the Otter Creek Wilderness Area, West Virginia would need to project at least 4.3 deciviews over the first implementation period (i.e., 0.31 deciviews × 14 years = 4.3 deciviews) of visibility improvement from the 29.0 deciviews baseline in 2004, resulting in visibility levels at or below 24.7 deciviews in 2018. West Virginia projects a 7.3 deciview improvement to visibility from the 29.0 deciview baseline to 21.7 deciviews in 2018 for the 20 percent most impaired days, and a 1.2 deciview improvement to 11.1 deciviews from the baseline visibility of 12.3 deciviews for the 20 percent least impaired days.

C. Long-Term Strategy/Strategies

The LTS is a compilation of state-specific control measures relied on by the state for achieving its RPGs. West Virginia’s LTS for the first implementation period addresses the emissions reductions from Federal,

State, and Local controls that take effect in the State from the end of the baseline period starting in 2004 until 2018. The West Virginia LTS was developed by the State, in coordination with the VISTAS RPO, through an evaluation of the following components: (1) Identification of the emission units within West Virginia and in surrounding states that likely have the largest impacts currently on visibility at the State’s two Class I areas; (2) estimation of emissions reductions for 2018 based on all controls required or expected under Federal and State regulations for the 2004–2018 period (including BART); (3) comparison of projected visibility improvement with the uniform rate of progress for the State’s Class I areas; and (4) application of the four statutory factors in the reasonable progress analysis for the identified emission units to determine if additional reasonable controls were required.

CAIR is also an element of West Virginia’s LTS. CAIR rule revisions were approved into the West Virginia SIP in 2007 and 2009. See 72 FR 71576 (December 18, 2007) and 74 FR 38536 (August 4, 2009). West Virginia opted to rely on CAIR emission reduction requirements to satisfy the BART requirements for SO₂ and NO_x from EGUs. See 40 CFR 51.308(e)(4). Therefore, West Virginia only required its BART-eligible EGUs to evaluate PM emissions for determining whether they are subject to BART, and, if applicable,

for performing a BART control assessment. Additionally, West Virginia concluded that no additional controls beyond CAIR are reasonable for reasonable progress for its EGUs for this first implementation period. Prior to the remand of CAIR, EPA believed the State's reliance on CAIR for specific BART and reasonable progress provisions affecting its EGUs was adequate, as detailed later in this notice. As explained in section VI of this notice, the EPA proposes today to issue a limited approval and a proposed limited disapproval of the State's regional haze SIP revision.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by VISTAS with assistance from West Virginia. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from Federal and State regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_x, PM, and SO₂. The BART Guidelines direct states to exercise judgment in deciding whether VOC and NH₃ impair visibility in their Class I area(s). VISTAS performed modeling sensitivity analyses, which demonstrated that anthropogenic emissions of VOC and NH₃ do not significantly impair visibility in the VISTAS region. Thus, while emissions inventories were also developed for NH₃ and VOC, and applicable Federal VOC reductions were incorporated into West Virginia's regional haze analyses, West Virginia did not further evaluate NH₃ and VOC emissions sources for potential controls under BART or reasonable progress.

VISTAS developed emissions for five inventory source classifications: Stationary point and area sources, off-road and on-road mobile sources, and biogenic sources. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. VISTAS estimated emissions on a countywide level for the

inventory categories of: (a) Stationary area sources; (b) off-road (or non-road) mobile sources (i.e., equipment that can move but does not use the roadways); and (c) biogenic sources (which are natural sources of emissions, such as trees). On-road mobile source emissions are estimated by vehicle type and road type, and are summed to the countywide level.

There are many Federal and State control programs being implemented that VISTAS and West Virginia anticipate will reduce emissions between the end of the baseline period and 2018. Emission reductions from these control programs are projected to achieve substantial visibility improvement by 2018 in the West Virginia Class I areas. The control programs relied upon by West Virginia include CAIR; the NO_x SIP Call; North Carolina's Clean Smokestacks Act; Georgia multi-pollutant rule; consent agreements for Santee Cooper, Tampa Electric, Virginia Electric and Power Company, Gulf Power, East Kentucky Power Cooperative, Dupont, West Point Paper Mill, Alabama Power, American Electric Power; Federal 2007 heavy duty diesel (2007) engine standards for on-road trucks and busses; Federal Tier 2 tailpipe controls for on-road vehicles; Federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules.

Controls from various Federal Maximum Achievable Control Technology (MACT) rules were also utilized in the development of the 2018 emission inventory projections. These MACT rules include the industrial boiler/process heater MACT (referred to as "Industrial Boiler MACT"), the combustion turbine and reciprocating internal combustion engines MACTs, and the VOC 2, 4, 7, and 10-year MACT standards.

On July 30, 2007, the U.S. District Court of Appeals mandated the vacatur and remand of the Industrial Boiler MACT Rule.⁸ This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator (CISWI) Definition Rule. Notwithstanding the vacatur of this rule, the VISTAS states, including West Virginia, decided to leave these controls in the modeling for their regional haze

SIPs since it is believed that by 2018, EPA will have re-promulgated an industrial boiler MACT rule or the states will have addressed the issue through state-level case-by-case MACT reviews in accordance with section 112(j) of the CAA. EPA finds this approach acceptable for the following reasons. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010 (75 FR 32006), and issued a final rule on March 21, 2011 (76 FR 15608), giving West Virginia time to assure the required controls are in place prior to the end of the first implementation period in 2018. In the absence of an established MACT rule for boilers and process heaters, the statutory language in section 112(j) of the CAA specifies a schedule for the incorporation of enforceable MACT-equivalent limits into the title V operating permits of affected sources. Should circumstances warrant the need to implement section 112(j) of the CAA for industrial boilers, we would expect, in this case, that compliance with case-by-case MACT limits for industrial boilers would occur no later than January 2015, which is well before the 2018 RPGs for regional haze. In addition, the RHR requires that any resulting differences between emissions projections and actual emissions reductions that may occur will be addressed during the five-year review prior to the next 2018 regional haze SIP. The expected reductions due to the original, vacated Industrial Boiler MACT rule were relatively small compared to the State's total SO₂, PM_{2.5}, and coarse particulate matter (PM₁₀) emissions in 2018 (i.e., 0.5 to 1.5 percent, depending on the pollutant, of the projected 2018 SO₂, PM_{2.5}, and PM₁₀ inventory), and not likely to affect any of West Virginia's modeling conclusions. Thus, if there is a need to address discrepancies such that projected emissions reductions from the now-vacated Industrial Boiler MACT were greater than actual reductions achieved by the replacement MACT, we would not expect that this would affect the adequacy of the existing West Virginia regional haze SIP.

Below, in Tables 2 and 3, are summaries of the 2002 baseline and 2018 estimated emission inventories for West Virginia.

⁸ See *NRDC v. EPA*, 489 F.3d 1250.

TABLE 2—2002 EMISSIONS INVENTORY SUMMARY FOR WEST VIRGINIA
[Tons per year]

	VOC	NH ₃	PM ₁₀	PM _{2.5}	NO _x	SO ₂
Point	15,775	453	22,076	15,523	277,589	570,153
Area	60,443	9,963	115,346	21,049	12,687	11,667
On-Road Mobile	45,284	2,036	1,481	1,068	63,525	2,635
Non-Road Mobile	18,566	9	1,850	1,728	33,329	2,112
Biogenics	357,850	N/A	N/A	N/A	2,776	N/A
Total	499,976	12,461	143,771	42,385	390,703	586,568

* N/A—Not applicable.

TABLE 3—2018 EMISSIONS INVENTORY SUMMARY FOR WEST VIRGINIA
[Tons per year]

	VOC	NH ₃	PM ₁₀	PM _{2.5}	NO _x	SO ₂
Point	17,952	593	28,084	20,165	94,600	177,517
Area (includes fires)	62,806	11,504	124,566	24,507	15,716	12,849
On-Road Mobile	14,652	2,268	747	369	15,530	231
Non-road Mobile	14,086	13	1,292	1,198	25,710	56
Biogenics	357,850	N/A	N/A	N/A	2,776	N/A
Total	467,347	14,377	154,688	46,239	154,332	190,653

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

VISTAS performed modeling for the regional haze LTS for the 10 southeastern states, including West Virginia. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. VISTAS used the following modeling system:

- *Meteorological Model:* The Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, PM_{2.5}, and regional haze regulatory modeling studies.

- *Emissions Model:* The Sparse Matrix Operator Kernel Emissions modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire and biogenic emission sources for photochemical grid models.

- *Air Quality Model:* The EPA's Models-3/Community Multiscale Air Quality (CMAQ) modeling system is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale. The photochemical model selected for this study was CMAQ, version 4.5. It was modified through VISTAS with a module for Secondary Organics Aerosols in an open and transparent manner that was also subjected to outside peer review.

CMAQ modeling of regional haze in the VISTAS region for 2002 and 2018 was carried out on a grid of 12 x 12 kilometer (km) cells that covers the 10 VISTAS states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia) and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36 x 36 km grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. VISTAS conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The VISTAS states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze*, located at <http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf>, (EPA-454/B-07-002), April 2007, and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations*, located at

<http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html>, EPA-454/R-05-001, August 2005, updated November 2005 ("EPA's Modeling Guidance").

VISTAS examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. VISTAS used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once VISTAS determined the model performance to be acceptable, VISTAS used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the State of West Virginia provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to

develop the glidepath and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA accepts the VISTAS technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress because the modeling system was chosen and simulated according to EPA Modeling Guidance. EPA's analysis of VISTAS modeling procedures and results is in the accompanying Technical Support Document (TSD).⁹ EPA agrees with the VISTAS model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the West Virginia LTS and regional haze SIP.

3. Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, source sectors, and geographic areas, VISTAS developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the VISTAS region, VISTAS' contribution assessment, based on IMPROVE monitoring data, demonstrated that ammonium sulfate is the major contributor to PM_{2.5} mass and visibility impairment at Class I areas in the VISTAS and neighboring states. On the 20 percent worst visibility days in 2000–2004, ammonium sulfate accounted for greater than 70 percent of the calculated light extinction at Class I areas in the Southern Appalachians. In particular, for Dolly Sods Wilderness Area, sulfate particles resulting from SO₂ emissions contribute roughly 80 percent to the calculated light extinction on the haziest days. In contrast, ammonium nitrate contributed less than five percent of the calculated light extinction at VISTAS Class I areas on the 20 percent worst visibility days. Particulate organic matter (organic carbon) accounted for 10–20 percent of light extinction on the 20 percent worst visibility days.

VISTAS grouped its 18 Class I areas into two types, either “coastal” or “inland” (sometimes referred to as “mountain”) sites, based on common/similar characteristics (e.g. terrain, geography, meteorology), to better represent variations in model sensitivity and performance within the VISTAS region, and to describe the common factors influencing visibility conditions in the two types of Class I areas. West Virginia's Class I areas are both “inland” areas.

Results from VISTAS' emission sensitivity analyses indicate that sulfate particles resulting from SO₂ emissions are the dominant contributor to visibility impairment on the 20 percent worst days at all Class I areas in VISTAS, including the two West Virginia areas. West Virginia concluded that reducing SO₂ emissions from EGU and non-EGU point sources in the VISTAS states would have the greatest visibility benefits for the West Virginia Class I areas. Because ammonium nitrate is a small contributor to PM_{2.5} mass and visibility impairment on the 20 percent worst days at the inland Class I areas in VISTAS, which include Dolly Sods Wilderness Area and Otter Creek Wilderness Area, the benefits of reducing NO_x and NH₃ emissions at these sites are small.

The VISTAS sensitivity analyses show that VOC emissions from biogenic sources such as vegetation also contribute to visibility impairment. However, control of these biogenic sources of VOC would be extremely difficult, if not impossible. The anthropogenic sources of VOC emissions are minor compared to the biogenic sources. Therefore, controlling anthropogenic sources of VOC emissions would have little if any visibility benefits at the Class I areas in the VISTAS region, including West Virginia. The sensitivity analyses also show that reducing primary carbon from point sources, ground level sources, or fires is projected to have small to no visibility benefit at the VISTAS Class I areas.

West Virginia considered the factors listed in 40 CFR 51.308(d)(3)(v) to develop its LTS, as described below. West Virginia, in conjunction with VISTAS, demonstrated in its SIP that elemental carbon (a product of highway and non-road diesel engines, agricultural burning, prescribed fires, and wildfires), fine soils (a product of construction activities and activities that generate fugitive dust), and ammonia are relatively minor contributors to visibility impairment at the Class I areas in West Virginia. WVDEP is not adopting any additional

controls on agricultural fires, prescribed fires, and wildfires, but does have a rule in place, Regulation 45CSR6—To Prevent and Control Air Pollution from Combustion of Refuse (74 FR 12560, March 25, 2009), which adopted revisions to include a provision for prescribed burning. In addition, the WVDEP has a number of rules in place that require the control of fugitive dust within plant boundaries, these include Regulation 45CSR2—To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers (68 FR 47473, August 11, 2003); Regulation 45CSR3—To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants (67 FR 63270, October 11, 2002); Regulation 45CSR5—To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas (67 FR 62379, October 7, 2002); and Regulation 45CSR7—To Prevent and Control Particulate Matter Air (68 FR 33010, June 3, 2003). EPA concurs with the State's technical demonstration showing that elemental carbon, fine soils, and ammonia are not significant contributors to visibility in the State's Class I areas, and therefore, finds that West Virginia has adequately satisfied 40 CFR 51.308(d)(3)(v).

The emissions sensitivity analyses conducted by VISTAS predict that reductions in SO₂ emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the VISTAS region, more than any other visibility-impairing pollutant. Specific to West Virginia, the VISTAS sensitivity analysis projects visibility benefits in Dolly Sods Wilderness Area and Otter Creek Wilderness Area from SO₂ reductions from EGUs in eight of the 10 VISTAS states: Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. Additional, smaller benefits are projected from SO₂ emission reductions from non-utility industrial point sources. SO₂ emissions contributions to visibility impairment from other RPO regions are comparatively small in contrast to the VISTAS states' contributions, and thus, controlling sources outside of the VISTAS region is predicted to provide less significant improvements in visibility in the Class I areas in VISTAS.

Taking the VISTAS sensitivity analyses results into consideration, West Virginia concluded that reducing SO₂ emissions from EGU and non-EGU point sources in certain VISTAS states would have the greatest visibility benefits for the West Virginia Class I

⁹ EPA's TSD to this action, entitled, “Technical Support Document for the Modeling Portions of the State of West Virginia's Regional Haze State Implementation Plan (SIP)” is included in the public docket for this action.

areas. The State chose to focus solely on evaluating certain SO₂ sources contributing to visibility impairment to the State's Class I areas for additional emission reductions for reasonable progress in this first implementation period. EPA agrees with the State's analyses and conclusions used to determine the pollutants and source categories that most contribute to visibility impairment in the West Virginia Class I areas, and finds the State's approach to focus on developing a LTS that includes largely additional measures for point sources of SO₂ emissions to be appropriate.

SO₂ sources for which it is demonstrated that no additional controls are reasonable in this current implementation period will not be exempted from future assessments for controls in subsequent implementation periods or, when appropriate, from the five-year periodic SIP reviews. In future implementation periods, additional controls on these SO₂ sources evaluated in the first implementation period may be determined to be reasonable, based on a reasonable progress control evaluation, for continued progress toward natural conditions for the 20 percent worst days and to avoid further degradation of the 20 percent best days. Similarly, in subsequent implementation periods, the State may use different criteria for identifying sources for evaluation and may consider other pollutants as visibility conditions change over time.

4. Procedure for Identifying Sources To Evaluate for Reasonable Progress Controls in West Virginia and Surrounding Areas

Through comprehensive evaluations by VISTAS and the Southern Appalachian Mountains Initiative (SAMI),¹⁰ the VISTAS states concluded that sulfate particles resulting from SO₂ emissions account for the greatest portion of the regional haze affecting the Class I areas in VISTAS states, including those in West Virginia. Utility and non-utility boilers are the main sources of SO₂ emissions within the southeastern United States. VISTAS developed a methodology for West Virginia, which

enables the State to focus its reasonable progress analysis on those geographic regions and source categories that impact visibility at each of its Class I areas. Recognizing that there was neither sufficient time nor adequate resources available to evaluate all emission units within a given area of influence (AOI) around each Class I area that West Virginia's sources impact, the State established a threshold to determine which emission units would be evaluated for reasonable progress control. In applying this methodology, WVDEP first calculated the fractional contribution to visibility impairment from all emission units within the SO₂ AOI for each of its Class I areas, and those surrounding areas in other states potentially impacted by emissions from emission units in West Virginia. The State then identified those emission units with a contribution of one percent or more to the visibility impairment at that particular Class I area, and evaluated each of these units for control measures for reasonable progress, using the following four "reasonable progress factors" as required under 40 CFR 51.308(d)(1)(i)(A): (i) Cost of compliance; (ii) time necessary for compliance; (iii) energy and non-air quality environmental impacts of compliance; and (iv) remaining useful life of the emission unit.

West Virginia's SO₂ AOI methodology captured greater than 64 percent of the total point source SO₂ contribution to visibility impairment in the two Class I areas in West Virginia, and required an evaluation of 17 emission units. Capturing a significantly greater percentage of the total contribution would involve an evaluation of many more emission units that have substantially less impact. EPA believes the approach developed by VISTAS and implemented for the Class I areas in West Virginia is a reasonable methodology to prioritize the most significant contributors to regional haze and to identify sources to assess for reasonable progress control in the State's Class I areas. The approach is consistent with EPA's Reasonable Progress Guidance. The technical approach of VISTAS and West Virginia was objective and based on several analyses, which included a large universe of emission units within and surrounding the State of West Virginia and all of the 18 VISTAS Class I areas. It also included an analysis of the VISTAS emission units affecting nearby Class I areas surrounding the VISTAS states that are located in other RPOs' Class I areas.

5. Application of the Four CAA Factors in the Reasonable Progress Analysis

WVDEP identified 17 EGU units with SO₂ emissions that were above the State's minimum threshold for reasonable progress evaluation because they were modeled to fall within the sulfate AOI of any Class I area and have a one percent or greater contribution to the sulfate visibility impairment to at least one Class I area.¹¹

a. Facilities With an Emissions Unit Subject to Reasonable Progress Analysis

Only one facility was a non-EGU that was subject to the four factor reasonable progress analysis. That facility is Capitol Cement which showed a greater than 1% contribution to Shenandoah National Park in Virginia. WVDEP analyzed whether SO₂ controls should be required for one facility, Capitol Cement, based on a consideration of the four factors set out in the CAA and EPA's regulations. For the limited purpose of evaluating the cost of compliance for the reasonable progress assessment in this first regional haze SIP for the non-EGUs, WVDEP concluded that it was not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy. Using the CAIR rule as a guide, a cost of \$2,000 per ton of SO₂ controlled or reduced was used as a determiner of cost effectiveness.

Capitol Cement is a portland cement manufacturing facility. Only Kiln 7 at Capitol Cement was identified as requiring reasonable progress analysis since Kilns 8 and 9 were replaced in 2002. WVDEP determined that the new preheater kiln should also be reviewed with respect to reasonable progress. VISTAS contracted with Alpine Geophysics to evaluate control options and costs for sources within AOI for the Class I areas of concern, including Capitol Cement. Alpine used EPA's Air ControlNet software to evaluate control options and costs for controls on Kiln 7. The control option identified was flue gas desulfurization (FGD) with a cost effectiveness of \$25,266 per ton, which exceeds the State's \$2,000 cost-effectiveness threshold for reasonableness. For the precalciner system, the control options and costs for controls were developed by the Mid-Atlantic/Northeast Visibility Union (MANE-VU) RPO through a contract with MACTEC, Inc., and published in the project report, *Assessment of Reasonable Progress for Regional Haze In MANE-VU Class I Areas*, dated July

¹⁰ Prior to VISTAS, the southern states cooperated in a voluntary regional partnership "to identify and recommend reasonable measures to remedy existing and prevent future adverse effects from human-induced air pollution on the air quality related values of the Southern Appalachian Mountains." States cooperated with FLMs, the USEPA, industry, environmental organizations, and academia to complete a technical assessment of the impacts of acid deposition, ozone, and fine particles on sensitive resources in the Southern Appalachians. The SAMI Final Report was delivered in August 2002.

¹¹ See also West Virginia SIP Appendix H fractional contribution analysis tables for each Class I Area.

9, 2007. WVDEP used this report for considering other control options and costs. The control options evaluated were Dry FGD, Wet FGD, and Advanced FGD. The cost per ton of SO₂ removed ranged from \$9,700–\$72,800. All control options are well above the State's \$2,000 cost-effectiveness threshold for reasonableness. The other statutory factors: (1) Time of necessary for compliance, (2) the energy and non-air quality environmental impacts of compliance, and (3) the remaining useful life of the emissions unit, were deemed not applicable, since there were no cost effective controls to evaluate.

As noted in EPA's Reasonable Progress Guidance, the states have wide latitude to determine appropriate additional control requirements for ensuring reasonable progress, and there are many ways for a state to approach identification of additional reasonable measures. In determining reasonable progress, states must consider, at a minimum, the four statutory factors, but states have flexibility in how to take these factors into consideration.

West Virginia applied the methodology developed by VISTAS for identifying appropriate sources to be considered for additional controls under reasonable progress for the implementation period addressed by this SIP, which ends in 2018. Using this methodology, WVDEP first identified those emissions and emissions units most likely to have an impact on visibility in the State's Class I areas. Units with emissions of SO₂ with a relative contribution to visibility impairment of at least a one percent contribution at any Class I area were then subject to further analysis to determine whether it would be appropriate to require controls on these units for purposes of reasonable progress. As noted above, of the emission units in West Virginia, one unit was subject to this analysis. WVDEP concluded, based on their evaluation of Capitol Cement, that no further controls were warranted at this time.

Having reviewed WVDEP's methodology and analyses presented in the SIP materials prepared by WVDEP, EPA is proposing to approve West Virginia's conclusion that no further controls are reasonable for this implementation period for the reviewed sources. EPA agrees with the State's approach of identifying the key pollutants contributing to visibility impairment at its Class I areas, and consider their methodology to identify sources of SO₂ most likely to have an impact on visibility on any Class I area, to be an appropriate methodology for

narrowing the scope of the State's analysis. In general, EPA also finds West Virginia's evaluation of the four statutory factors for reasonable progress to be reasonable. Although the use of a specific threshold for assessing costs means that West Virginia may not have fully considered other available emissions reduction measures above their threshold, EPA believes that the West Virginia SIP still ensures reasonable progress. EPA notes that given the emissions reductions resulting from CAIR, West Virginia's BART determinations, and the measures in nearby states, the visibility improvements projected for the affected Class I areas are in excess of that needed to be on the uniform rate of progress glidepath. In considering West Virginia's approach, EPA is also proposing to place great weight on the fact that there is no indication in the SIP submittal that West Virginia, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I areas. In addition, EPA finds that West Virginia fully evaluated, in terms of the four reasonable progress factors, all control technologies available at the time of its analysis and applicable to these facilities.

b. Emission Units Exempted From Preparing a Reasonable Progress Control Analysis

Seventeen emission units identified for a reasonable progress control analysis are EGUs. These EGUs are subject to CAIR and were also found to be subject to BART. These EGUs are Allegheny Energy—Ft. Martin, Harrison, and Pleasants; AEP-Appalachian Power—John Amos and Mountaineer; and Dominion-Mt. Storm.

To determine whether any additional controls beyond those required by CAIR would be considered reasonable for West Virginia's EGUs for this first implementation period, WVDEP evaluated the SO₂ reductions expected from the EGU sector. The EGUs located in West Virginia are expected to reduce their 2002 SO₂ emissions by approximately 78 percent by 2018. WVDEP believes it has an accurate understanding of where EGU emission reductions will occur in West Virginia based upon existing and planned installations of post combustion controls for the afore mentioned EGUs, that are or will be controlled with greater than 90% efficiency.

To further evaluate whether CAIR requirements will satisfy reasonable progress for SO₂ for EGUs, WVDEP considered the four reasonable progress

factors set forth in EPA's RHR as they apply to the State's entire EGU sector for available control technologies. The State also reviewed CAIR requirements that include 2015 as the "earliest reasonable deadline for compliance" for EGUs installing retrofits, see (70 FR 25162, 25197–25198, May 12, 2005). This is a particularly relevant consideration because CAIR addresses the reasonable progress factors of cost and time necessary for compliance. In the preamble to CAIR, EPA recognized there are a number of factors that influence compliance with the emission reduction requirements set forth in CAIR, which make the 2015 compliance date reasonable. For example, each EGU retrofit requires a large pool of specialized labor resources, which exist in limited quantities. In addition, retrofitting an EGU is a very capital-intensive venture and, therefore, undertaken with caution. Hence, allowing retrofits to be installed over time enables the industry to learn from early installations. Lastly, EGU retrofits over time minimize disruption of the power grid by enabling industry to take advantage of planned outages.

Since EPA made the determination in CAIR that the earliest reasonable deadline for compliance for reducing emissions was 2015, WVDEP concluded that the emission reductions required by CAIR constitute reasonable measures for West Virginia EGUs during this first assessment period (between baseline and 2018). In addition, WVDEP notes that while the reasonable progress evaluation only applies to existing sources, the State will continue to follow the visibility analysis requirements as part of all new major source new source review (NSR) and PSD permitting actions.

Prior to the CAIR remand by the D.C. Circuit, EPA believed the State's demonstration that no additional controls beyond CAIR are reasonable for SO₂ for affected EGUs for the first implementation period to be acceptable on the basis that the CAIR requirements, reflected the most cost-effective controls that can be achieved over the CAIR SO₂ compliance timeframe, which spans out to 2015. However, the State's demonstration regarding CAIR and reasonable progress for EGUs, and other provisions in this SIP revision, are based on CAIR and thus, the Agency proposes today to issue a limited approval and a limited disapproval of the State's regional haze SIP revision.

6. BART

BART is an element of West Virginia's LTS for the first implementation period. The BART evaluation process consists

of three components: (a) An identification of all the BART-eligible sources, (b) an assessment of whether the BART-eligible sources are subject to BART, and (c) a determination of the BART controls. These components, as addressed by WVDEP and WVDEP's findings, are discussed below.

a. BART-Eligible Sources

The first phase of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. WVDEP identified the BART-eligible sources in West Virginia by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and EPA's regulations (40 CFR 51.301): (1) One or more emission units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) emission unit(s) was constructed on or after August 6, 1962, and was in existence prior to August 6, 1977; and (3) potential emissions of any visibility-impairing pollutant from subject units are 250 tons or more per year.

The BART Guidelines also direct states to address SO₂, NO_x and direct PM (including both PM₁₀ and PM_{2.5}) emissions as visibility-impairment pollutants, and to exercise judgment in determining whether VOC or ammonia emissions from a source impair visibility in an area (70 FR 39160). VISTAS modeling demonstrated that VOC from anthropogenic sources and ammonia from point sources are not significant visibility-impairing pollutants in West Virginia. WVDEP has determined, based on the VISTAS modeling, that VOC and ammonia emissions from the State's point sources are not anticipated to cause or contribute significantly to any impairment of visibility in Class I areas and should be exempt for BART purposes.

b. BART-Subject Sources

The second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, i.e., those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines, West Virginia required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

The BART Guidelines allow states to use the CALPUFF¹² modeling system or another appropriate model to predict the visibility impacts from a single source on a Class I area, and to therefore, determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, i.e., "is subject to BART." The Guidelines state that EPA believes CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162). West Virginia, in coordination with VISTAS, used the CALPUFF modeling system to determine whether individual sources in West Virginia were subject to or exempt from BART.

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions, and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. The VISTAS states, including West Virginia, developed a "Protocol for the Application of CALPUFF for BART Analyses." Stakeholders, including EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the VISTAS protocol. VISTAS developed a post-processing approach to use the new IMPROVE equation with the CALPUFF model results so that the BART analyses could consider both the old and new IMPROVE equations.

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, "A single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment." The BART Guidelines also state that "the appropriate threshold for determining whether a

¹² Note that our reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (e.g., the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer on the following Web site: <http://www.src.com/verio/download/download.htm>.

source 'contributes to visibility impairment' may reasonably differ across states," but, "[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews." The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach.

West Virginia used a contribution threshold of 0.5 deciview for determining which sources are subject to BART. EPA agrees with the State's rationale for choosing this threshold value. The results of the visibility impacts modeling demonstrated that the majority of the individual BART-eligible sources had visibility impacts well below 0.5 deciview.

West Virginia initially identified twenty-two BART-eligible sources. The State subsequently determined that nineteen sources are exempt from being considered BART-eligible. Nineteen of the twenty-two sources were able to demonstrate exemptions with modeling demonstrations. Table 4 identifies the nineteen BART-exempt facilities located in West Virginia, and identifies the three sources subject to BART.

TABLE 4—WEST VIRGINIA BART-ELIGIBLE AND SUBJECT-TO-BART SOURCES

Facilities With Unit(s) Subject to BART Analysis
Dominion—Mt. Storm. ¹³ PPG Industries. Capitol Cement.
Facilities With Unit(s) Found Not Subject to BART
<p><i>EGU CAIR and BART Modeling Sources:</i> AEP-Appalachian Power Co.—John Amos. AEP-Ohio Power Co.—Mitchell. AEP-Appalachian Power Co.—Mountaineer. Allegheny Energy—Ft. Martin. Allegheny Energy—Harrison. Allegheny Energy—Pleasants.</p> <p><i>Non-EGU BART Modeling:</i> Mittal Steel USA—Weirton, Inc. Mountain State Carbon. ERGON Corp.—West Virginia, Inc. Century Aluminum. DuPont Belle. Clearon. Pocahontas Coal Co.—Eastern Gulf Prep Plant. GE Woodmark. Pinnacle Mining—No. 50 Coal Prep Plant. Kepler Processing. Bayer.</p>

TABLE 4—WEST VIRGINIA BART-ELIGIBLE AND SUBJECT-TO-BART SOURCES—Continued

Columbia Chemicals.
Cabot Corporation.

West Virginia found that three of its BART-eligible sources (i.e., Dominion—Mt. Storm, PPG Industries, and Capitol Cement) had modeled visibility impacts of more than the 0.5 deciview threshold for BART exemption. These three facilities are considered to be subject to BART and submitted State permit applications including their proposed BART determinations.

Although PPG Industries initially modeled a visibility impact greater than 0.5 deciviews on multiple Class I areas, PPG Industries elected to accept a permit limit on its BART eligible unit, which reduces its visibility impact to below the exemption threshold of 0.5 deciviews of impact at any Class I area. Therefore, PPG Industries is now considered BART exempt.

The remaining nineteen sources demonstrated that they are exempt from being subject to BART by modeling less than a 0.5 deciview visibility impact at the affected Class I areas. The seven BART-eligible EGUs only modeled PM₁₀ emissions because West Virginia relied on CAIR to satisfy BART for SO₂ and NO_x for its EGUs in CAIR, in accordance with 40 CFR 51.308(e)(4). Six out of the seven EGUs modeling demonstrated that PM₁₀ emissions do not contribute to visibility impairment in any Class I area. Modeling at the Dominion—Mt. Storm, on the other hand, demonstrated that its PM₁₀ emissions exceeded the 0.5 deciview contribution threshold and thus, required a BART analysis. Prior to the CAIR remand, the State's reliance on CAIR to satisfy BART for NO_x and SO₂ for affected CAIR EGUs was fully approvable and in accordance with 40 CFR 51.308(e)(4). However, as explained in section IV of this notice, the BART assessments for CAIR EGUs for NO_x and SO₂ and other provisions in this SIP revision are based on CAIR, and thus, the Agency proposes today to issue a limited approval and a limited disapproval of the State's June 18, 2008, regional haze SIP revision.

c. BART Determinations

Dominion—Mt. Storm has modeled visibility impacts of more than the 0.5 deciview threshold for BART exemption

and, therefore, is considered to be subject to BART for PM₁₀ only. Capitol Cement did not submit an exemption modeling demonstration because the BART unit is scheduled to be replaced. Since these two facilities did not demonstrate that they are exempt from BART, each one submitted to the State, permit applications that included their proposed BART determinations.

In accordance with the BART Guidelines, to determine the level of control that represents BART for each source, the State first reviewed existing controls on these units to assess whether these constituted the best controls currently available, then identified what other technically feasible controls are available, and finally, evaluated the technically feasible controls using the five BART statutory factors. The State's evaluations and conclusions, and EPA's assessment, are summarized below.

Dominion—Mt. Storm is an EGU containing three BART-subject units and is only subject to BART for PM₁₀. Units 1, 2, and 3 are subject to BART. The current PM controls of electrostatic precipitator (ESP) and flue gas desulfurization (FGD) were determined to satisfy BART, however, the allowable PM₁₀ emission rate was lowered from 0.05 pounds per million british thermal units (lb/mmBtu) to 0.03 lb/mmBtu, resulting in a reduction of up to 508 tons per year (tpy) per unit, or maximum reduction of 1524 tpy. The EPS and FGD must aggregate 99.5 percent PM₁₀ removal efficiency. The compliance date for Dominion—Mt. Storm is December 13, 2007 for BART controls.

The three emission units at Dominion—Mt. Storm are also subject to the EPA CAIR. Dominion—Mt. Storm has already installed scrubbers and NO_x controls on the emission units at this facility. West Virginia has opted to rely on CAIR to satisfy BART for SO₂ and NO_x for its EGUs subject to CAIR, as allowed by 40 CFR 51.308(e)(4).

Once the BART limits are established, the source is then required by 40 CFR 51.308(e)(1)(v) to maintain the control equipment required and establish procedures to ensure such equipment is properly operated and maintained. For Dominion—Mt. Storm, Units 1, 2, and 3 are required to calculate the potential particulate matter emissions on a daily basis using the monitoring procedures and calculation methodology outlined in Regulation 45 CSR 2's monitoring plan. Dominion—Mt. Storm shall record any instance of calculated emissions in excess of the limits given above and any corrective actions taken. Dominion—Mt. Storm shall also maintain and operate,

at all reasonable times, appropriate equipment on the ESP and FGD, to continuously monitor the performance of each control device. PM₁₀ testing is done in accordance with the schedule listed in Regulation 45 CSR 2.

EPA agrees with WVDEP's analyses and conclusions for the BART emission units located at Dominion—Mt. Storm. EPA has reviewed the West Virginia analyses and concluded they were conducted in a manner that is consistent with EPA's BART Guidelines. Therefore, the conclusions reflect a reasonable application of EPA's guidance to this source.

PPG Industries elected to accept a permit limit on its BART eligible unit which reduces its visibility impact to below the exemption threshold of 0.5 deciview impact at any Class I area. Therefore, PPG is considered BART exempt. PPG Industries has taken a BART limit of 1478.8 pounds per hour (lbs/hour) on Boiler 5 and the total SO₂ emissions from Boilers 3, 4, and 5 shall not exceed 3766.8 lbs/hour. PPG Industries is required to get 4690.56 tpy of SO₂ emission reductions from Boiler 5 by May 1, 2008. EPA agrees with WVDEP's conclusion that PPG Industries is now BART-exempt based on the threshold of 0.5 deciview impact sited in EPA's BART guidance.

Capitol Cement is a Portland cement manufacturing facility located in Martinsburg, WV that previously applied for and had been granted a PSD permit. The PSD permit was for the replacement of two existing long wet process cement kilns and associated clinker coolers with a modern precalciner system and associated equipment. The only BART-eligible unit at the facility, Kiln 9, is one of the two kilns being replaced, and the permit includes a requirement for the permanent shutdown of the existing kilns.

WVDEP has determined no additional controls would need to be installed on Kiln 9 since the PSD permit requires a permanent shutdown of the existing kiln by the BART compliance deadline, or when full-production was achieved with the replacement kiln, or no later than 180 days after startup. The modifications at Capitol Cement are expected to result in 1741.51 tpy of SO₂ reductions, 1374.81 tpy of NO_x reductions, and 66.01 tpy of PM₁₀ reductions. EPA agrees with WVDEP's conclusions for BART for the Capitol Cement facility: That no additional controls need to be installed prior to permanent shutdown of Kiln 9.

The BART determinations for each of the facilities discussed above and the resulting BART emission limits were

¹³ EGUs were only evaluated for PM emissions. West Virginia relied on CAIR to satisfy BART for SO₂ and NO_x for its EGUs in CAIR, in accordance with 40 CFR 51.308(e)(4). Thus, SO₂ and NO_x were not analyzed.

adopted by West Virginia into the State's regional haze SIP. WVDEP incorporated the BART emission limits into state operating permits, and submitted these permits as part of the State's regional haze SIP. The BART limits adopted in the SIP are as follows: For Dominion—Mt. Storm, an allowable PM₁₀ emission rate of 0.03lb/mmBtu for Units 1, 2, and 3; for PPG Industries, a limit of 1478.8 lbs/hr for Boiler 5; and for Capitol Cement, to shutdown Kiln 9 within 180 days of startup of the new preheater-precaciner kiln, or when full-production is achieved with the replacement kiln, or before BART Compliance deadline, whichever comes first. The BART compliance dates West Virginia has set in their June 18, 2008 Regional Haze Submittal comply with the BART Rule requiring controls be implemented no later than five years after publication in the **Federal Register** for the U.S. EPA Final Approval of the West Virginia Regional Haze SIP.

7. RPGs

The RHR at 40 CFR 51.308(d)(1) requires states to establish RPGs for

each Class I area within the state (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility. VISTAS modeled visibility improvements under existing Federal and State regulations for the period 2004–2018, and additional control measures which the VISTAS states planned to implement in the first implementation period. At the time of VISTAS modeling, some of the other states with sources potentially impacting visibility at the West Virginia Class I areas had not yet made final control determinations for BART and/or reasonable progress, and thus, these controls were not included in the modeling submitted by West Virginia. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, which give further assurances that West Virginia will achieve its RPGs. This modeling demonstrates that the 2018 base control scenario provides for an improvement in visibility better than the uniform rate of progress for both of the West

Virginia's Class I areas for the most impaired days over the period of the implementation plan and ensures no degradation in visibility for the least impaired days over the same period.

As shown in Table 5 below, West Virginia's RPGs for the 20 percent worst days provide greater visibility improvement by 2018 than the uniform rate of progress for the State's Class I areas. Also, the RPGs for the 20 percent best days provide greater visibility improvement by 2018 than current best day conditions. The modeling supporting the analysis of these RPGs is consistent with EPA guidance prior to the CAIR remand. The regional haze provisions specify that a state may not adopt a RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. 40 CFR 51.308(d)(1)(vi). Therefore, the CAIR states with Class I areas, like West Virginia, took into account emission reductions anticipated from CAIR in determining their 2018 RPGs.¹⁴

TABLE 5—WEST VIRGINIA RPGS
[In deciviews]

Class I area	Baseline visibility, 20% worst days	2018 Reasonable progress goal, 20% worst days (improvement from baseline)	Uniform rate of progress at 2018, 20% worst days	Baseline visibility, 20% best days	2018 Reasonable progress goal, 20% best days (improvement from baseline)
Dolly Sods Wilder- ness Area	29.0	21.7 (7.3)	24.7	12.3	11.1 (1.2)
Otter Creek Wilder- ness Area	29.0	21.7 (7.3)	24.7	12.3	11.1 (1.2)

The RPGs for the Class I areas in West Virginia are based on modeled projections of future conditions that were developed using the best available information at the time the analysis was done. These projections can be expected to change as additional information regarding future conditions becomes available. For example, new sources may be built, existing sources may shut down or modify production in response to changed economic circumstances, and facilities may change their emission characteristics as they install control equipment to comply with new rules. It would be both impractical and resource-intensive to require a state to continually adjust the RPG every time an event affecting these future projections changed.

EPA recognized the problems of a rigid requirement to meet a long-term goal based on modeled projections of future visibility conditions, and addressed the uncertainties associated with RPGs in several ways. EPA made clear in the RHR that the RPG is not a mandatory goal (64 FR 35733). At the same time, EPA established a requirement for a midcourse review and, if necessary, correction of the states' regional haze plans. See 40 CFR 52.308(g). In particular, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emission management strategies in meeting the RPG and to provide an assessment of whether current implementation strategies are sufficient

for the state or affected states to meet their RPGs. If a state concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the state to take appropriate action. See 40 CFR 52.308(h). The nature of the appropriate action will depend on the basis for the state's conclusion that the current strategies are insufficient to meet the RPGs.

EPA anticipates that the Transport Rule will result in similar or better improvements in visibility than predicted from CAIR. Because the Transport Rule is not final, however, we do not know at this time how it will affect any individual Class I area and cannot accurately model future conditions based on its implementation. By the time West Virginia is required to undertake its five year progress review,

¹⁴ Many of the CAIR states without Class I areas similarly relied on CAIR emission reductions within the state to address some or all of their

contribution to visibility impairment in other states' Class I areas, which the impacted Class I area state(s) used to set the RPGs for their Class I area(s).

Certain surrounding non-CAIR states also relied on reductions due to CAIR in nearby states to develop their regional haze SIP submittals.

however, it is likely that the impact of the Transport Rule and other measures can be meaningfully assessed. If, in particular Class I areas, the Transport Rule does not provide similar or greater benefits than CAIR and meeting the RPGs at one of its Federal Class I Areas is in jeopardy, the State will be required to address this circumstance in its five year review. Accordingly, EPA proposes to approve West Virginia's RPGs for the Dolly Sods Wilderness Area and the Otter Creek Wilderness Area.

D. Coordination of RAVI and Regional Haze Requirements

EPA's visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for the RHR. Under EPA's RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. An *integral vista* is defined in 40 CFR 51.301 as a "view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area." Visibility in any mandatory Class I Federal area includes any integral vista associated with that area. The FLMs did not identify any integral vistas in West Virginia. In addition, neither Class I area in West Virginia is experiencing RAVI, nor are any of its sources affected by the RAVI provisions. Thus, the June 18, 2008, West Virginia regional haze SIP submittal does not explicitly address the two requirements regarding coordination of the regional haze with the RAVI LTS and monitoring provisions. However, West Virginia previously made a commitment to address RAVI should the FLM certify visibility impairment from an individual source.¹⁵ EPA finds that this regional haze submittal appropriately supplements and augments West Virginia's RAVI visibility provisions to address regional haze by updating the monitoring and LTS provisions.

In the June 18, 2008 submittal, WVDEP updated its visibility monitoring program and developed a LTS to address regional haze. Also in this submittal, WVDEP affirmed its commitment to complete items required in the future under EPA's RHR. Specifically, WVDEP made a commitment to review and revise its regional haze implementation plan and submit a plan revision to EPA by July 31, 2018, and every 10 years thereafter.

See 40 CFR 51.308(f). In accordance with the requirements listed in 40 CFR 51.308(g) of EPA's regional haze regulations and 40 CFR 51.306(c) of the RAVI LTS regulations, WVDEP made a commitment to submit a report to EPA on progress towards the RPGs for each mandatory Class I area located within West Virginia, and in each mandatory Class I area located outside West Virginia which may be affected by emissions from within West Virginia. The progress report is required to be in the form of a SIP revision and is due every five years following the initial submittal of the regional haze SIP. Consistent with EPA's monitoring regulations for RAVI and regional haze, West Virginia will rely on the IMPROVE network for compliance purposes, in addition to any RAVI monitoring that may be needed in the future. See 40 CFR 51.305, 40 CFR 51.308(d)(4). Also, the West Virginia NSR rules, previously approved in the State's SIP, continue to provide a framework for review and coordination with the FLMs on new sources which may have an adverse impact on visibility in either form (i.e., RAVI and/or regional haze) in any Federal Class I Area.

E. Monitoring Strategy and Other Implementation Plan Requirements

The primary monitoring network for regional haze in West Virginia is the IMPROVE network. There is currently one IMPROVE site in West Virginia, which serves as the monitoring site for both the Dolly Sods Wilderness Area and Otter Creek Wilderness Area.

IMPROVE monitoring data from 2000–2004 serves as the baseline for the regional haze program, and is relied upon in the June 18, 2008, regional haze submittal. In the submittal, West Virginia states its intention to rely on the IMPROVE network for complying with the regional haze monitoring requirement in EPA's RHR for the current and future regional haze implementation periods.

Data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the five-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data. The Visibility Information Exchange Web System (VIEWS) Web site has been maintained by VISTAS and the other RPOs to provide ready access to the IMPROVE data and data analysis tools. West Virginia is encouraging VISTAS and the other RPOs to maintain the VIEWS or a similar data management system to facilitate analysis of the IMPROVE data.

In addition to the IMPROVE measurements, there is long-term limited monitoring by the FLMs, which provides additional insight into the progress toward the regional haze goals. Such measurements include web cameras operated by the United States Department of Agriculture Forest Service at Dolly Sods. West Virginia and the local air agencies in the State operate a comprehensive PM_{2.5} network of filter-based Federal reference method monitors and filter based speciated monitors.

F. Consultation With States and FLMs

1. Consultation With Other States

In December 2006 and in May 2007, the State Air Directors from the VISTAS states held formal interstate consultation meetings. The purpose of the meetings was to discuss the methodology proposed by VISTAS for identifying sources to evaluate for reasonable progress. The states invited FLM and EPA representatives to participate and to provide additional feedback. The Directors discussed the results of analyses showing contributions to visibility impairment from states to each of the Class I areas in the VISTAS region.

WVDEP has evaluated the impact of West Virginia sources on Class I areas in neighboring states. The state in which a Class I area is located is responsible for determining which sources, both inside and outside of that state, to evaluate for reasonable progress controls. Because many of these states had not yet defined their criteria for identifying sources to evaluate for reasonable progress, West Virginia applied its AOI methodology to identify sources in the State that have emission units with impacts large enough to potentially warrant further evaluation and analysis. Based on an evaluation of the four reasonable progress statutory factors, West Virginia determined that there are no additional control measures for these West Virginia emission units that would be reasonable to implement to mitigate visibility impacts in Class I areas in these neighboring states. WVDEP has consulted with these states regarding its reasonable progress control evaluations showing no cost-effective controls available for those emission units in West Virginia contributing at least one percent to visibility impairment at Class I areas in the states. Additionally, WVDEP sent letters to the other states in the VISTAS region documenting its analysis that there are no cost-effective controls available for those units whose SO₂ emission contribute at least one

¹⁵ West Virginia also submitted a SIP revision addressing PSD that EPA approved on November 2, 2006 (71 FR 64470) and NSR that EPA approved on November 2, 2006 (71 FR 64468).

percent to visibility impairment at Class I areas.

Regarding the impact of sources outside of the State on Class I areas in West Virginia, WVDEP sent letters to Maryland pertaining to the New Page facility located in Luke, Maryland because it contributes 11.81 percent of sulfate at Dolly Sods Wilderness Area with 9.86 percent attributable to two units, one of which is subject to BART. The Maryland Department of the Environment is still in the process of evaluating BART and reasonable progress for the New Page facility. Any controls resulting from these determinations will provide additional emissions reductions and result in visibility improvement, which gives further assurances that West Virginia will achieve its RPGs. Therefore, to be conservative, West Virginia opted not to rely on any additional emission reductions from sources located outside the State's boundaries beyond those already identified in the State's regional haze SIP submittal.

West Virginia received letters from the MANE-VU RPO States of Maine, New Jersey, New Hampshire, and Vermont in the spring of 2007, stating that based on MANE-VU's analysis of 2002 emissions data, West Virginia contributed to visibility impairment to Class I areas in those states. The MANE-VU states identified thirteen EGU stacks in West Virginia that they would like to see controlled to 90 percent efficiency. They also requested a control strategy to provide a 28 percent reduction in SO₂ emissions from sources other than EGUs that would be equivalent to MANE-VU's proposed low sulfur fuel oil strategy. All thirteen of the EGU stacks identified by MANE-VU will be controlled by 2018, and thirteen of the units will be controlled with a 95 percent efficiency, resulting in an additional 73,015 tons of SO₂ reductions beyond those requested by MANE-VU. West Virginia's non-EGUs are predicted to emit 61,704 tons of SO₂ in 2018. MANE-VU's request of 28 percent reduction would be 17,277 tons of SO₂. The additional 91,864 tons of SO₂ reductions achieved by the installation and operation of more efficient controls on EGUs and the shutdown of additional EGUs, will achieve greater reductions than the 28 percent reduction requested by MANE-VU. These reductions satisfy MANE-VU's request. EPA finds that West Virginia has adequately addressed the consultation requirements in the RHR and appropriately documented its consultation with other states in its SIP submittal.

2. Consultation With the FLMs

Through the VISTAS RPO, West Virginia and the nine other member states worked extensively with the FLMs from the U.S. Departments of the Interior and Agriculture to develop technical analyses that support the regional haze SIPs for the VISTAS states. The proposed regional haze plan for West Virginia was submitted to the FLMs for review on September 21, 2007. West Virginia received comments from the FLMs on October 22, 2007. Since the comments were received prior to the start of the public hearing, the WVDEP was able to incorporate some of the suggested changes in the public review document. The public comment period was from October 26, 2007 to November 27, 2007. However, due to the short time frame not all comments could be addressed prior to the start of the public comment period, but were addressed in a separate document titled "Federal Land Manager Consultation." WVDEP reopened the public comment period for two specific portions of the proposed SIP. The two specific parts of the Regional Haze SIP were a revised BART determination and the FLM conclusions/recommendations and DEP responses. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), WVDEP made a commitment in the SIP to ongoing consultation with the FLMs on regional haze issues throughout implementation of its plan, including annual discussions. WVDEP also affirms in the SIP that FLM consultation is required for those sources subject to the State's NSR regulations.

G. Periodic SIP Revisions and Five-Year Progress Reports

Consistent with 40 CFR 51.308(g), WVDEP affirmed its commitment to submitting a progress report in the form of a SIP revision to EPA every five years following this initial submittal of the West Virginia regional haze SIP. The report will evaluate the progress made towards the RPGs for each mandatory Class I area located within West Virginia and in each mandatory Class I area located outside West Virginia which may be affected by emissions from within West Virginia. West Virginia also offered recommendations for several technical improvements that, as funding allows, can support the State's next LTS.

If another state's regional haze SIP identifies that West Virginia's SIP needs to be supplemented or modified, and if, after appropriate consultation West Virginia agrees, today's action may be

revisited, or additional information and/or changes will be addressed in the five-year progress report SIP revision.

VI. What action is EPA proposing to take?

EPA is proposing a limited approval and a limited disapproval of a revision to the West Virginia SIP submitted by the State of West Virginia on June 18, 2008, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308, as described previously in this action. EPA is also proposing to find that this revision meets the applicable visibility related requirements of CAA Section 110(a)(2) including, but not limited to 110(a)(2)(D)(i)(II) and 110(a)(2)(J), relating to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS. EPA has determined that once the Regional Haze Plan submitted by the State of West Virginia is fully approved it will satisfy the requirements of the CAA. EPA is taking this action pursuant to those provisions of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials

in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997),

applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s limited approval and limited disapproval of the West Virginia Regional Haze SIP does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 6, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–17664 Filed 7–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA-HQ-OPP-2010-0197; FRL-8880-7]

RIN 2070-ZA11

Pesticides; Policies Concerning Products Containing Nanoscale Materials; Opportunity for Public Comment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed policy statement; extension of comment period.

SUMMARY: EPA issued a proposed policy statement in the **Federal Register** of June 17, 2011, concerning possible approaches for obtaining information about what nanoscale materials are present in registered pesticide products. This document extends the comment period for 30 days, from July 18, 2011, to August 17, 2011.

DATES: Comments, identified by docket identification (ID) number EPA-HQ-OPP-2010-0197, must be received on or before August 17, 2011.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of Friday, June 17, 2011.

FOR FURTHER INFORMATION CONTACT: Jed Costanza, Antimicrobials Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; *telephone number:* (703) 347-0204; *fax number:* (703) 308-8005; *e-mail address:* costanza.jed@epa.gov.

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** of June 17, 2011 (76 FR 35383) (FRL-8877-9). In that document, EPA sought comment on several possible approaches for obtaining information about what nanoscale materials are present in registered pesticide products. Four requests for a 30-day extension of the comment period were submitted by CropLife America, the Biocides Panel of the American Chemical Council, the Chemical Producers & Distributors Association, and the International Center for Technology Assessment. These requests are in docket EPA-HQ-OPP-2010-0197, accessible via <http://www.regulations.gov>. EPA is hereby extending the comment period, which was set to end on July 18, 2011, to August 17, 2011.

To submit comments, or access the docket, please follow the detailed

instructions as provided under **ADDRESSES** in the June 17, 2011 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Administrative practice and procedure, Nanotechnology, Pesticides and pests.

Dated: July 6, 2011.

William R. Diamond,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011-17464 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 476

[CMS-1518-CN2]

RIN 0938-AQ24

Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2012 Rates; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical errors that occurred in Tables 2 and 4J, that were referenced in the proposed rule entitled "Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2012 Rates" which appeared in the May 5, 2011 **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brian Slater, (410) 786-5229.

SUPPLEMENTARY INFORMATION:

I. Background

Tables 2 and 4J, referenced in FR Doc. 2011-9644 of May 5, 2011 (76 FR 25788), and available through the Internet on the CMS Web site (see 76 FR 26043 and 26044 for an explanation of publishing such Tables on the Internet), reflect an error in the calculation of the outmigration adjustment. (We refer readers to (76 FR 25887 and 25888) for an explanation of such adjustment.)

This error affects proposed Table 4J, which lists hospitals located in qualifying outmigration adjustment counties. Table 4J also lists the proposed adjustments calculated for qualifying hospitals. To correct the error, we have re-evaluated which counties are eligible for the outmigration adjustment in FY 2012. There are an additional 104 providers (in 39 counties) eligible for the adjustment, 66 of which are also eligible for reclassification for FY 2012. We sent a Joint Signature Memorandum on July 1, 2011 to fiscal intermediaries informing them of this change, along with a letter to be forwarded to providers with further instructions for those possibly affected by this change. The Joint Signature Memorandum and the letter to providers provides further instructions on how providers may revise certain reclassification decisions, or receive the outmigration adjustment rather than a section 1886(d)(8)(B) redesignation. To access the Memorandum and letter and to review such procedures, we refer readers to our Web site <http://www.cms.gov/AcuteInpatientPPS/IPPS2012/list.asp>.

II. Summary of Errors and Corrections Posted on the CMS Web Site

On page 26043, we list Table 2 and Table 4J as the tables that will be available only through the Internet. The version of Table 4J that was posted via the Internet on the CMS Web site at the time the proposed rule was filed for public inspection at the Office of the **Federal Register** inadvertently omitted the outmigration adjustment for 104 providers. Therefore, we have corrected these errors and will post corrections to Table 2 and 4J on the CMS Web site at http://www.cms.hhs.gov/AcuteInpatientPPS/01_overview.asp

The corrections to Table 4J include only the newly eligible hospitals and their corresponding outmigration adjustments. The corrections to Table 2 include only the hospitals that are newly eligible for an outmigration adjustment and their corresponding corrected FY 2012 proposed wage indices.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 7, 2011.

Dawn L. Smalls,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2011-17672 Filed 7-11-11; 11:15 am]

BILLING CODE 4120-01-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 11, 23, and 52**[FAR Case 2010–004; Docket 2010–0004;
Sequence 1]

RIN 9000–AM03

**Federal Acquisition Regulation;
Biobased Procurements**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to the Farm Security and Rural Investment Act. The rule proposes to require contractors to report the biobased products purchased under service and construction contracts. This will allow Federal agencies to monitor compliance with the Federal preference for purchasing biobased products.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before September 12, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2010–004 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2010–004” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2010–004.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2010–004” on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2010–004, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2010–004.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to the Farm Security and Rural Investment Act. The rule proposes to require contractors to report the biobased products purchased under service and construction contracts. This will allow Federal agencies to monitor compliance with the Federal preference for purchasing biobased products.

A. Overview

Section 9002 of the Farm Security and Rural Investment Act of 2002, codified at 7 U.S.C. 8102, was amended by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). 7 U.S.C. 8102 requires Federal agencies to establish a procurement program, develop procurement specifications, procure biobased products, and give preference to those items that are composed of the highest percentage of biobased products practicable or those products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1). 7 U.S.C. 8102 allows flexibility to procuring agencies not to procure products if the product cannot be acquired—

(i) Within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting reasonable performance requirements; or

(iii) At a reasonable price.

The Biobased Products Preference Program was originally implemented in the FAR on November 7, 2007 (72 FR 63040). This proposed rule will implement additional provisions of 7 U.S.C. 8102 as amended by Public Law 110–246.

B. Invitation for Specific Comments

The rule is being published as a proposed rule because the specific method of collecting the information required by Public Law 110–246 is not specified in the statute but is necessary for implementing in Federal contracts. This proposed rule identifies the specific proposed method.

(1) DoD, GSA, and NASA invite comments on the least burdensome, most cost-efficient method to collect this information. DoD, GSA, and NASA are particularly interested in current

practices to track purchases of biobased products.

(a) How is the purchase and use of biobased products tracked and to what level of detail are they tracked, *e.g.*, product type, product name, quantity, price?

(b) Is the tracking automated or manual?

2. Comments are solicited on the level of effort required to collect and report this information under a specific federal contract. Is the purchase and use of biobased products allocated to a specific contract as a direct cost or as an overhead costs?

(3) The estimated burden includes Fiscal Year 2009 and 2010 Federal Procurement Data System contract actions selected from the following Product Service Codes: A—Research and Development; F—Natural Resources Management; J—Maintenance, Repair, and Rebuilding of Equipment; M—Operation of Government-Owned Facility; S—Utilities and Housekeeping Services; T—Photographic, Mapping, Printing, and Publication Services; Y—Construction of Structures and Facilities; and Z—Maintenance, Repair or Alteration of Real Property.

(a) Are there certain contracts where biobased items are not typically purchased, such as information technology services, or should all services be included in the information collection?

(b) What impact or estimated burden would there be on subcontractors under contract actions which include FAR 52.223–2? What would be the average number of subcontractors on such contract actions?

(4) Comments are solicited on any new technologies, including Internet-based technologies, that would reduce the burden for this information collection and afford significant opportunities for reducing costs and increasing simplification of the collection.

II. Proposed Changes to the FAR**A. Definition**

The definition of “biobased product” is revised in FAR part 2 in accordance with the Public Law 110–246. A corresponding change is made at FAR 23.404(e).

B. Limit on Data Collection

For biobased products, a prohibition was added at FAR 11.302(c)(2) against agencies collecting more data than would typically be provided by other business entities, other than data confirming the biobased content of a product. At FAR 23.405(a)(3) a cross-

reference is added to FAR 11.302(c) to remind contracting officers that when acquiring recovered material or biobased products, the contracting officer may request information or data on such products, including on the recycled or biobased content or related standards of the products.

C. Annual Report

FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, is proposed for amendment to require the contractor to report annually the product types and dollar value of any biobased products purchased during the preceding fiscal year on the contract.

The purpose of this information collection is to monitor Federal agencies' compliance with 7 U.S.C. 8102, Federal Procurement of Biobased Products. Agencies can internally track direct procurement of biobased items. However, Federal agencies lack the ability to directly track biobased products purchased under service and construction contracts. The proposed information collection requirement is to track biobased products purchased by contractors under service and construction contracts.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

This proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, because the rule requires that the contractor report on the product types and dollar value of biobased products in the performance of a service or construction contract. Where this information is not already available, this may mean contractors will need to

create an inventory management system to track the product types and dollar value of biobased products purchased for each contract. However, DoD, GSA, and NASA expect that the impact will be minimal, because the existing clause being amended already requires the contractor to make maximum use of biobased products in the performance of a service and construction contract, and the change does not impose any substantial requirements. Small businesses are active suppliers of biobased products, and this rule may serve to enhance their participation in this market.

In addition, the Small Business Administration's Office of Advocacy estimates that compliance with environmental requirements is significantly more costly to small businesses than large business. For recent research on this topic, see <http://www.sba.gov/sites/default/files/rs371tot.pdf>.

The Regulatory Secretariat has submitted a copy of the Interim Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2010–004) in correspondence.

The analysis is summarized as follows:

This rule implements 7 U.S.C. 8102 as amended by Public Law 110–246, which establishes the policy that Federal agencies shall establish a procurement program, develop procurement specifications, procure biobased products, and give preference to those items that are composed of the highest percentage of biobased products practicable or those products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1).

This rule imposes a reporting requirement on prime contractors with construction or service contracts, unless the contract will not involve the use of USDA-designated items.

The rule promotes the use of biobased products and requires an annual report on the product types and dollar value of any USDA-designated biobased products purchased in carrying out service and construction contracts during the previous year. With regard to the submission of the report, we estimate that 48,376 contractors

will be affected. Of those entities, approximately 35,927 are small businesses.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat will submit a request for approval of a new information collection requirement concerning “Biobased Procurements” to the Office of Management and Budget.

A. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 48,376.

Responses per respondent: 5.

Total annual responses: 241,880.

Preparation hours per response: 5.

Total response burden hours: 1,209,400.

B. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than September 12, 2011 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), *Attn:* Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., 7th Floor, Washington, DC 20417. Please cite OMB Control Number 9000–0180, Biobased Procurements, in correspondence.

List of Subjects in 48 CFR Parts 2, 11, 23, and 52

Government procurement.

Dated: July 6, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 11, 23, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 11, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS**§ 2.101 [Amended]**

2. Amend section 2.101 by removing from paragraph (b)(2), in the definition “biobased product”, the words “(including plant, animal, and marine materials) or” and adding “and” in its place.

PART 11—DESCRIBING AGENCY NEEDS

3. Amend section 11.302 by revising paragraph (c)(2) to read as follows:

§ 11.302 Policy.

* * * * *

(c) * * *

(2) For biobased products, agencies may not require, as a condition of purchase of such products, the vendor or manufacturer to provide more data than would typically be provided by other business entities offering products for sale to the agency, other than data confirming the biobased content of a product (see 7 CFR 2902.8).

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**§ 23.404 [Amended]**

4. Amend section 23.404 by removing from paragraph (e)(1) the words “(including plant, animal, and marine materials)”.

5. Amend section 23.405 by revising paragraph (a)(2) and adding (a)(3) to read as follows:

§ 23.405 Procedures.

(a) * * *

(2) *Biobased products.* Contracting officers should refer to USDA’s list of USDA-designated items (available through the Internet at [http://](http://www.biopreferred.gov)

www.biopreferred.gov) and to their agencies’ affirmative procurement program when purchasing supplies that contain biobased material or when purchasing services that could include supplies that contain biobased material.

(3) When acquiring recovered material or biobased products, the contracting officer may request information or data on such products, including on the recycled or biobased content or related standards of the products (see 11.302(c)).

* * * * *

§ 23.406 [Amended]

6. Amend section 23.406 by removing from paragraph (b) “<http://www.usda.gov/biopreferred>” and adding “<http://www.biopreferred.gov>” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.223–2 by—

a. Revising the date of the clause;

b. Removing from paragraph (b) “<http://www.usda.gov/biopreferred>” and adding <http://www.biopreferred.gov> in its place; and

c. Adding paragraphs (c) and (d) to read as follows:

52.223–2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts

* * * * *

Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Date)

* * * * *

(c) In the performance of this contract, the Contractor shall—

(1) Report to the cognizant Contracting Officer and the agency environmental manager on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous year, between October 1 and September 30, in this contract;

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance; and
(iii) Contact the cognizant environmental manager to obtain the preferred submittal format, if that format is not specified in this contract.

(d) The cognizant environmental manager for this contract is: _____.

[Contracting Officer shall insert full name, phone number, and email address or Web site for reporting.]

[FR Doc. 2011–17453 Filed 7–12–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA–2011–0101]

RIN 2127–AK99

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA is proposing to restore the blue and green color boundaries to Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices and Associated Equipment*, that were removed when the agency published a final rule reorganizing the standard on December 4, 2007.

DATES: Comments to this proposal must be received on or before September 12, 2011.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by any of the following methods:

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help” or “FAQ.”

• *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Regardless of how you submit comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://www.dot.gov/privacy.html>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Markus Price, Office of Crash Avoidance Standards, NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (Telephone: (202) 366–0098) (Fax: (202) 366–7002).

For legal issues: Mr. Thomas Healy, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (Telephone: (202) 366–2992) (Fax: (202) 366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

NHTSA published a NPRM on December 30, 2005¹ to reorganize FMVSS No. 108 and improve the clarity of the standard's requirements thereby increasing its utility for regulated parties. It was the agency's goal during the rewrite process to make no substantive changes to the requirements of the standard.

FMVSS No. 108 has been in existence since 1968. The standard had been amended on an *ad hoc* basis over time resulting in a patchwork organization of the standard. Regulated parties had stated that the standard was difficult to interpret because of its organization. In response to these concerns the agency sought to rewrite the standard to make it more understandable by adopting a simplified numbering scheme, to improve organization by grouping related materials in a more logical and consistent sequence, and to reduce the certification burden of regulated parties who previously needed to review a few dozen third-party documents. The agency issued the December 30, 2005, NPRM in an attempt to address these concerns.

Based on the comments received in response to the NPRM, NHTSA published a final rule on December 4,

2007,² amending FMVSS No. 108 by reorganizing the regulatory text so that it provides a more straightforward and logical presentation of the applicable regulatory requirements; incorporating important agency interpretations of the existing requirements; and reducing reliance on third-party documents incorporated by reference. The preamble of the final rule again stated that the rewrite of FMVSS No. 108 was administrative in nature and would have no impact on the substantive requirements of the standard. The final rule made several changes to the proposal contained in the NPRM including removing the blue and green color boundary requirements from paragraph S14.4.1.3.2.

On August 11, 2008, SABIC Innovative Plastics sent a letter to NHTSA claiming that the agency did not allow for public comment when it made the decision to remove the blue and green color boundaries from the standard. SABIC further argued that in removing the blue and green color boundaries from paragraph S14.4.1.3.2, the agency substantively changed the requirements of FMVSS No. 108 during the rewrite process.

II. Green and Blue Color Boundaries

Previous to the rewrite of the standard, paragraph S5.1.5 of FMVSS No. 108 required that the color of all lamps required by the standard comply with SAE J578c, *Color Specification for Electric Signal Lighting Devices*, (FEB 1977). SAE J578c contained color boundary definitions for red, yellow, white, green, restricted blue, and signal blue light. The NPRM included the boundary definition for the colors blue and green, but left out restricted blue. In the final rule the agency removed the color boundary definitions for green and blue from paragraph S14.4.1.3.2, retaining only the definitions for the red, yellow, and white color boundaries.

The agency is aware that, although neither blue nor green are directly used within the standard, it is possible to use these color boundaries to certify a material to the outdoor exposure test located in the paragraphs of S14.4.2.2. Prior to the reorganization final rule, a manufacturer could separately certify both a clear (white) material and a blue material to the haze test. The blue material alone could not be used in a lamp because the lamp itself would not emit the color of light required by the standard (only white, amber, and red lights are permitted). Once individually certified to the three year haze test, however, the blue and clear material

could be mixed to produce a clear material with a blue tint, which could then be used in a lamp lens provided the lamp itself emits light within the white color boundary. Under the standard, the mixed material can be certified to the haze test without an additional three years of testing.

The agency recognizes that removing the color definitions for blue and green creates a substantive change to the requirements of FMVSS No. 108. Since it was not the agency's intention to create any substantive modifications to the standard, as stated in the NPRM and preamble of the final rule, the agency is proposing to amend FMVSS No. 108 to add color boundary definitions for green, restricted blue and signal blue so that the requirements of the rewrite coincide with those of the old standard. Further, the agency notes that these additional color boundary definitions have no impact on color that any lamp must emit. The agency is not proposing to change the color requirements for any lamp mandated by FMVSS No. 108.

III. Costs, Benefits, and the Proposed Compliance Date

Because this proposal only restores an existing requirement to the standard, the agency does not anticipate that there would be any costs or benefits associated with this rulemaking action. Accordingly, the agency did not conduct a separate economic analysis for this rulemaking.

The agency proposes an effective date of December 1, 2012, should a final rule be issued, to coincide with the effective date of the FMVSS No. 108 administrative rewrite.

IV. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.³ We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the following methods:

- **Federal eRulemaking Portal:** go to <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on "Help" or "FAQ."

¹ 70 FR 77454, (Dec. 30, 2005).

² 72 FR 68234, (Dec. 4, 2007).

³ See 49 CFR 553.21.

• *Mail*: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery or Courier*: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

• *Fax*: (202) 493-2251.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.⁴

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the Office of Management and Budget (OMB) and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at <http://dmses.dot.gov/submit/DataQualityGuidelines.pdf>.

How can I be sure that my comments were received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.⁵

In addition, you should submit a copy, from which you have deleted the

claimed confidential business information, to the Docket by one of the methods set forth above.

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

If a comment is received too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

V. Regulatory Notices and Analyses

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." It is not considered to be significant under E.O. 12866 or the Department's regulatory policies and procedures.

B. National Environmental Policy Act

We have reviewed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have a significant impact on the quality of the human environment.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of the proposed rule under the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposal restores the green and blue color boundaries contained in the currently applicable version of FMVSS No. 108 to the administrative rewrite of FMVSS No. 108 which has not yet taken effect. Accordingly, we do not anticipate that this proposal would have a significant economic impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform,"⁶ NHTSA has

⁴ Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

⁵ See 49 CFR part 512.

⁶ 61 FR 4729 (Feb. 7, 1996).

considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of a proposed or final rule that includes a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule is not anticipated to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually. The cost impact of this proposed rule is expected to be \$0. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandate Reform Act.

G. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rule does not contain any collection of information requirements requiring review under the PRA.

H. Executive Order 13045

Executive Order 13045⁷ applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule does not pose such a risk for children. The primary effects of this proposal are to amend the lighting standard to restore the green and blue color boundaries.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specification and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

This proposal would not adopt or reference any new industry or consensus standards that were not already present in FMVSS No. 108.

J. Executive Order 13211

Executive Order 13211⁸ applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the

regulatory action meets either criterion, we must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA.

This proposal restores the green and blue color boundaries contained in the currently applicable version of FMVSS No. 108 to the administrative rewrite of FMVSS No. 108 which has not yet taken effect. Therefore, this proposed rule will not have any adverse energy effects. Accordingly, this proposed rulemaking action is not designated as a significant energy action.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

M. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an organization, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you

⁷ 62 FR 19885 (Apr. 23, 1997).

⁸ 66 FR 28355 (May 18, 2001).

may visit <http://www.dot.gov/privacy.html>.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

Section 571.108 is amended effective December 1, 2012 by adding paragraphs S14.4.1.4.2.4, S14.1.4.2.5, and S14.4.1.4.2.6 to read as follows:

* * * * *

S14.4.1.4.2.4 Green. The color of light emitted must fall within the following boundaries:

$y = 0.73 - 0.73x$ (yellow boundary);

$y = 0.50 - 0.50x$ (blue boundary);

$x = 0.63y - 0.04$ (white boundary).

S14.4.1.4.2.5 Restricted Blue. The color of light emitted must fall within the following boundaries:

$y = 0.07 + 0.81x$ (green boundary);

$x = 0.40 - y$ (white boundary);

$x = 0.13 + 0.60y$ (violet boundary).

S14.4.1.4.2.6 Signal Blue. The color of light emitted must fall within the following boundaries:

$y = 0.32$ (green boundary);

$x = 0.40 - y$ (white boundary);

$x = 0.16$ (white boundary);

$x = 0.13 + 0.60y$ (violet boundary).

* * * * *

Issued on: July 7, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011-17658 Filed 7-12-11; 8:45 am]

BILLING CODE 4910-59-P

Notices

Federal Register

Vol. 76, No. 134

Wednesday, July 13, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2008-0008]

Salmonella Verification Sampling Program: Response to Comments on New Agency Policies and Clarification of Timeline for the Salmonella Initiative Program (SIP)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; response to comments; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is responding to comments on a January 28, 2008 **Federal Register** notice (73 FR 4767-4774), which described upcoming policy changes in the FSIS *Salmonella* Verification Program and outlined a new voluntary *Salmonella* Initiative Program (SIP) for meat and poultry slaughter establishments that agree to share internal food safety data with FSIS in order to receive waivers of regulatory requirements. SIP benefits public health in that it encourages slaughter establishments to test for microbial pathogens and to respond to the ongoing results by taking steps when necessary to regain process control and thus to minimize the presence of pathogens of public health concern. In addition, SIP enables FSIS to use establishment data to enhance public health protection. In this notice, the Agency is announcing several policy developments and changes regarding SIP. This notice also includes Agency responses to comments on SIP and on other issues discussed in the January 2008 **Federal Register** notice.

DATES: Comments are due by September 12, 2011. Policies regarding waivers for On-Line Reprocessing (OLR), the HACCP-based Inspection Models Project (HIMP), or any other slaughter

process will be implemented by November 10, 2011.

ADDRESSES: FSIS invites interested persons to submit comments on the January 2008 notice referenced in this document with regard to SIP. Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to Regulations.Gov at <http://www.regulations.gov/> and follow the online instructions at that site for submitting comments.

Mail, including floppy disks or CD-ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2-2127, George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5474, Beltsville, MD 20705-5474.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2006-0034. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Daniel Engeljohn, PhD, Assistant Administrator for Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 349-E, Jamie Whitten Building, 14th and Independence, SW., Washington, DC 20250-3700; telephone (202) 205-0495, fax (202) 720-2025; e-mail daniel.engeljohn@fsis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Details of SIP 2011

SIP, as described in the January 2008 **Federal Register** notice, offers incentives to meat and poultry slaughter establishments to control *Salmonella* in their operations. SIP does this by granting waivers of regulatory requirements with the condition that establishments test for *Salmonella*,

Campylobacter (if applicable), and generic *E. coli* or other indicator organisms and share all sample results with FSIS. SIP benefits public health because it encourages establishments to test for microbial pathogens, which is a key feature of effective process control. Also, under SIP establishments will share their data with FSIS to inform Agency policy on pathogens. Furthermore, if the establishment's results show it is not meeting the Agency's current performance standards for turkeys or young chickens, it is to increase testing, determine whether its waiver is affecting its public health protection performance, and take steps to regain process control in order to minimize the presence of pathogens of public health concern. Establishments currently operating under regulatory waivers will have to participate in SIP or drop their waivers. Establishments operating under waivers through HIMP will continue to operate as HIMP establishments but will have to conduct new testing under SIP. The primary policy decisions regarding SIP discussed in this notice, including recent developments and changes, include:

- The comment period for SIP issues has been extended to September 12, 2011.
- SIP is open to all establishments.
- Establishments that have received waivers under SIP terms and conditions are to begin submitting microbial testing data to FSIS within 60 days of publication of this notice.
- Establishments currently operating under waivers for OLR, HIMP, or any other slaughter process will have 120 days from publication of this notice to participate in SIP or else drop their waivers and return to conventional inspection.
- SIP establishments must agree to conditions prescribed in the January 2008 **Federal Register** notice, except that enumeration of weekly postchill samples will not be required.
- SIP establishments are not routinely required to provide FSIS with isolates, but, if requested, establishments must work with FSIS on a mutually agreeable means for doing so.
- The Agency is selecting no more than five establishments that applied in 2008 to receive waivers of regulations restricting line speeds. If necessary, FSIS will re-open the application

process until five establishments have been selected.

- A SIP establishment will not be suspended or lose its waiver solely because of its *Salmonella* testing results.

- FSIS is considering reducing the required frequency of testing for SIP establishments that meet the *Salmonella* performance standard for at least six months and can maintain that level of process control with reduced testing frequency.

- FSIS is also considering reducing the required frequency of testing for small and very small establishments that participate in SIP.

- The Agency intends to conduct its own unannounced, small-set sampling to verify the consistent performance of all establishments, including those participating in SIP.

- FSIS will begin evaluating whether establishments operating under SIP waivers are meeting the new *Salmonella* and *Campylobacter* performance standards with sample sets beginning in and after July 2011 as announced in a **Federal Register** notice of March 21, 2011 (76 FR 15282).

Events Leading Up to SIP

FSIS is the public health regulatory agency in the U.S. Department of Agriculture (USDA) responsible for ensuring that the nation's commercial supply of meat, poultry, and processed egg products is safe, wholesome, and correctly labeled and packaged. FSIS establishes performance standards for *Salmonella* on carcasses and raw products that enter commerce and evaluates whether establishments are meeting the standards.

After an intensive review of the results of several years of this testing, FSIS published a **Federal Register** notice on February 27, 2006 (71 FR 9772–9777; Docket 04–026N) in which the Agency set forth three establishment performance categories for *Salmonella* based on current standards. The new performance Category 1 was set at an upper limit of no more than half the standard. Category 2 was set at more than half but not exceeding the standard. Category 3 included establishments exceeding the standard. In the 2006 **Federal Register** notice, FSIS stated that it intended to track the performance of the different product classes it samples for *Salmonella* over the next year and, after that time, publish the names of establishments in Categories 2 and 3 for any product class that did not have 90 percent of its establishments in Category 1.

On January 28, 2008, FSIS published a notice in the **Federal Register** (73 FR 4767–4774; Docket FSIS–2006–0034) in

which it announced that the Agency would begin publishing monthly results of completed FSIS verification sets for establishments in Categories 2 and 3, beginning with young chicken slaughter establishments, which have been a primary concern for FSIS. Publication of Categories 2 and 3 young chicken slaughter establishments began on March 28, 2008. FSIS has continued to publish the names of these establishments on or about the 15th of each month since then. FSIS believes that doing so has provided a strong incentive for improved industry performance. After FSIS announced performance categories in 2006, 55–60 percent of non-compliant establishments moved to become compliant within two years (see 75 FR 27288–27294). FSIS is also considering publishing verification sampling results for other product classes.

In the 2006 **Federal Register** notice, the Agency stated that it intended to update the year long Nationwide Microbiological Baseline Data Collection Programs to better measure improvements in pathogen reduction in all classes of raw product. Both young chicken and young turkey microbiological baselines were completed in 2008 and 2009, respectively, and from them, FSIS developed updated performance standards for *Salmonella* and new performance standards for *Campylobacter*.

On May 14, 2010, FSIS published a **Federal Register** notice (75 FR 27288) in which it announced the forthcoming implementation of the new performance standards for the pathogenic microorganisms *Salmonella* and *Campylobacter* for chilled carcasses in young chicken (broiler) and turkey slaughter establishments. The new performance standards were developed in response to a charge from the President's Food Safety Working Group and, as stated above, the standards were based on recent FSIS Nationwide Microbiological Baseline Data Collection Programs. The standards are applied to sample sets collected and analyzed by the Agency to evaluate establishment performance with respect to requirements of the Pathogen Reduction/Hazard Analysis and Critical Control Points (PR/HACCP) Final Rule. The Agency received detailed comments in response to the notice and published a follow-up notice on March 21, 2011 (76 FR 15282) responding to the comments. FSIS will begin evaluating whether establishments operating under SIP waivers are meeting the new *Salmonella* and *Campylobacter*

performance standards with sample sets beginning in and after July 2011.

FSIS plans to begin focusing next on the *Salmonella* controls in market hog slaughter operations. In July 2011 the standards for *Salmonella* positives in young chicken and turkey will become 7.5 and 1.7 percent, respectively. Thus, as of July 2011 establishments slaughtering market hog carcasses will have the highest remaining permissible standard (8.7 percent) for *Salmonella* of all raw carcass product classes. Significantly, outbreaks resulting in human illness involving pork have been consistently identified on an annual basis, suggesting pork as a vehicle for salmonellosis. Between 2000 and 2007, about four outbreaks and 82 illnesses per year on average have been associated with pork. A simple yearly comparison suggests a decline from 2000 to 2002 (five, seven, and three outbreaks, respectively), followed by a period of stability from 2003–2006 (three, four, three, and three outbreaks, respectively) and an increase in 2007 (seven outbreaks and 236 illnesses). (Reference: <http://wwwn.cdc.gov/foodborneoutbreaks/>.)

The FSIS Nationwide Market Hog Microbiological Baseline Data Collection Program, which includes collecting carcass sponge samples at pre-evisceration and post-chill, is underway, and sample collection is expected to be completed in 2011. New performance standards for *Salmonella* will be developed based on the results from the year-long baseline survey.

FSIS has not provided any compliance guideline information for market hog slaughter operations. The Agency expects to remedy this situation by issuing guidelines within the next 120 days and to confer with the pork industry on *Salmonella* controls.

In the January 2008 **Federal Register** notice, FSIS also announced that it would increase the Agency's use of targeted sampling and collaborative microbial serotype and subtype data. In addition, FSIS announced that it would exclude from the *Salmonella* verification testing program schedule any slaughter establishment that processes all carcasses slaughtered into ready-to-eat (RTE) product or that sends all of its raw products to another official federally inspected establishment for further processing into an RTE product. The notice also announced that establishments producing a low volume of raw ground beef would be removed from the scheduling frame for PR/HACCP verification sample sets. These establishments would be sampled for *Salmonella* at the same time they are sampled for *E. coli* O157:H7. FSIS is

now considering removing establishments slaughtering heifer and steers, regardless of size, from the scheduling frame for PR/HACCP verification sample sets and increasing sampling of raw ground beef and beef trim.

FSIS received no significant comments on these changes and therefore began implementing them immediately after the comment period ended. FSIS does not schedule an establishment for *Salmonella* verification testing if all product is processed for RTE. Such product is excluded from sampling regardless of whether it is processed as RTE in the slaughter establishment or diverted under establishment or FSIS control to another federally inspected establishment. A slaughter establishment producing RTE product subject to this exclusion and non-RTE carcasses is sampled for the non-RTE product classes only.

Similarly, FSIS removed establishments producing a low volume of raw ground beef (less than 1,000 pounds per day and fewer than 150 days per year) from the PR/HACCP verification sample set scheduling frame because these establishments will be sampled for *Salmonella* at the same time and manner in which they are sampled for *E. coli* O157:H7.

Response to Comments on SIP, SIP Policy Developments, and Comment Period Extension

In response to requests for additional time to comment on SIP, FSIS is re-opening the comment period for SIP issues for 60 days (see **DATES**) and setting a new timeline for establishments with existing OLR, HIMP, or any other slaughter process waivers to participate in SIP (see Implementation Timelines below). After the re-opened comment period ends, the Agency will evaluate all comments received on SIP and publish its response to those comments in a notice in the **Federal Register**.

Conditions for Participating in SIP

The Agency reconsidered the potential scope of SIP and decided not to limit the program to establishments that are meeting the current *Salmonella* standard for young chickens or turkeys as measured by FSIS. Additionally, establishments slaughtering classes of poultry other than young chickens and turkeys may participate in SIP. FSIS will allow those establishments to collect *Salmonella* data to determine an establishment-specific baseline of microbiological contamination that the establishment will use to demonstrate

continuous process control in place of using the young chicken or turkey *Salmonella* performance standard.

FSIS decided not to suspend an establishment from the program or revoke its waiver solely because of its *Salmonella* testing results. The *Salmonella* status of an establishment is determined by FSIS sampling results. However, when applying for SIP an establishment agrees to take certain actions, which are described below, if its testing results show it is not meeting the current *Salmonella* standard for turkeys or for young chickens.

All establishments that apply to participate in the program must agree to certain conditions. An establishment selected for SIP is required to take samples for microbial analysis on each line every day and during each shift. The sample set of reference for *Salmonella* is the same size as that used by FSIS for verification testing of the specific product class, but, unlike current FSIS practice, the establishment may take multiple samples on one day. Each week, poultry slaughter establishments selected for SIP collect at least one sample at both rehang and postchill. Establishments collect the postchill sample at the approximate time the carcass sampled at rehang would move to postchill, so as to reflect the time it takes for a carcass to pass from rehang to postchill. Establishments are to analyze all samples for *Salmonella*, *Campylobacter* (if applicable), and generic *E. coli* or other indicator organisms but are not required to enumerate these samples.

In the event of an establishment exceeding the *Salmonella* standard in its own testing, the establishment must investigate whether the waiver conditions in the establishment's process contributed to, or caused, the lack of process control. The establishment must document its findings and the corrective and preventive actions taken to return to the current *Salmonella* standard of process control. The establishment must increase the frequency of its sampling for *Salmonella* until the current standard of process control is regained as shown by two consecutive sample sets with results meeting the current standard. FSIS inspection personnel will verify that a SIP establishment takes these actions when appropriate.

FSIS is considering the possibility of reducing the required frequency of testing of samples for SIP establishments that maintain the current standard for at least six months and can maintain that level of process control with reduced testing frequency. The Agency intends, however, to conduct its

own unannounced, small-set sampling to verify the consistent performance of all establishments, including those participating in SIP. FSIS is also considering reducing the frequency with which small and very small establishments that participate in SIP will need to sample.

SIP establishments are not routinely required to provide FSIS with isolates, but, if requested, establishments must work with FSIS on a mutually agreeable means for doing so.

Every establishment that wishes to participate in the SIP must agree to share its food safety data with FSIS and make the data available for copying or electronic transfer to the Agency. Establishments may obtain instructions on how to share microbial data results with FSIS via an electronic data sharing template by e-mailing the SIP Mailbox at SIP.Mailbox@fsis.usda.gov. FSIS understands that many meat and poultry establishments have viewed such data as confidential commercial information. Pursuant to USDA's Freedom of Information Act (FOIA) regulations (7 CFR 1.1 *et seq.*), FSIS is responsible for making the determination with regard to the disclosure or nondisclosure of information in agency records that has been submitted by a business. When, in the course of responding to an FOIA request, an agency cannot readily determine whether the information obtained from a person is confidential business information, the Agency will seek to obtain and carefully consider the views of the submitter of the information and provide the submitter an opportunity to object to any decision to disclose the information. FSIS will protect establishments' confidential business information from public disclosure to the extent authorized under FOIA and in conformity with USDA's FOIA regulations.

FSIS will, however, combine data submitted by individual establishments in SIP and publish the aggregated results on a quarterly basis. The data from establishments participating in SIP will play an important role in improving public health protection by providing many additional sample results for Agency evaluation in developing public health policies related to decreasing foodborne illness. On a quarterly basis, FSIS will analyze the aggregated microbial data from SIP establishments to evaluate the overall effects of the waivers. In developing these quarterly evaluations, the data analysts may consider observed patterns of the aggregated SIP establishment microbial data, together with an assessment of potential associations between the

microbial testing results and various SIP establishment factors (e.g., location and type of antimicrobial interventions and selected information related to processing procedures, etc.) recorded on the electronic data sharing template.

Waivers of Regulatory Requirements Under SIP

In return for meeting the conditions of SIP, the Agency grants establishments appropriate waivers of certain regulatory requirements, based upon establishment proposals and documentation, under FSIS regulations at 9 CFR 303.1(h) and 381.3(b). These regulations specifically provide for the Administrator to waive for limited periods any provisions of the regulations to permit experimentation so that new procedures, equipment, or processing techniques may be tested to facilitate definite improvements.

SIP establishments do not need to repeat in-plant protocols or submit microbial monitoring test results to FSIS. Establishments requesting participation in SIP need simply to agree to the conditions of SIP regarding pathogen testing and sharing of test result data with FSIS as described above.

SIP applications and requests for waivers should be sent to isabel.arrington@fsis.usda.gov and should follow the guidance procedures for waivers and notifications and protocols posted on the FSIS Web site at http://www.fsis.usda.gov/OPPDE/op/technology/New_Technology_Waiver.pdf and <http://www.fsis.usda.gov/OPPDE/op/technology/guidance.pdf>.

Waivers of Line Speed Restrictions Under SIP

The January 2008 **Federal Register** notice also stated that FSIS would select "no more than five establishments in which any waiver of regulatory requirements may affect inspection whereby additional inspectors are needed." Additional inspectors would be necessary for establishments that receive waivers of regulatory restrictions on line speed, which has been a subject of interest for industry. Establishments desiring additional FSIS inspection personnel under SIP were asked to show that they had (1) For all *Salmonella* sample sets collected by FSIS since February 2006, a positive rate of half the rate required to be in Category 1 (e.g., 5 percent for young chickens), as well as for establishment-collected sample sets completed within the past quarter, and that they had (2) identified *Salmonella* as a hazard reasonably likely to occur in their HACCP plans or

had written controls in place to address *Salmonella* within the Sanitation Standard Operating Procedures or other HACCP prerequisite programs.

Qualifying establishments were asked to request these waivers within 15 days of publication of the January 2008 **Federal Register** notice. The Agency is selecting no more than five establishments from the requests it received after the 2008 notice. Due to the time that has elapsed, FSIS is evaluating the requests of establishments that had previously volunteered under the prior criteria on completeness of application, as well as on other considerations such as geographic location, number of FSIS inspectors needed, prior participation in SIP for other regulatory waivers, and FSIS data needs for ongoing policy development. If additional plants are needed to fill the five slots, FSIS will ask for additional volunteers.

FSIS also recognizes that evaluation of the effects of line speed on food safety should include the effects of line speed on establishment employee safety. To obtain preliminary data on this matter, FSIS has asked the National Institute for Occupational Safety and Health (NIOSH) to evaluate the effects of increased line speed as part of the SIP waiver program. NIOSH has stated its willingness to evaluate the effects of increased production volume on employee health, with a focus on musculoskeletal disorders and acute traumatic injuries. NIOSH's activities may ultimately include observation of work processes and practices; collection of company payroll, personnel, and injury and illness records; interviews with plant managers, supervisors, and employees; health surveys of employees; and videotaping and measurement of specific aspects of job tasks. NIOSH will prepare a report based on its findings of short-, intermediate-, and long-term effects from the process modifications. NIOSH will make recommendations as needed. FSIS will use any available data from NIOSH activities to inform its decisions as it moves forward with planned regulatory reform. FSIS will require that establishments granted waivers for regulatory line speeds under SIP cooperate with NIOSH.

Implementation Timelines

The Agency stated in its May 16, 2008 Constituent Update that it would implement SIP as soon as possible for establishments that do not have an existing waiver. As stated in the January 2008 **Federal Register** notice, FSIS strives to respond to requests for waivers within 60 days. The Agency gives priority to those establishments

that are already meeting the most recent young chicken or turkey standard. FSIS will contact establishments that have already submitted requests to participate in SIP but have not met the conditions for a waiver.

Because FSIS is re-opening the comment period for SIP, FSIS is updating the timeline announced in the January 2008 **Federal Register** notice for establishments that are operating under waived regulations for HIMP, OLR, or any other slaughter process.

Under the previous timeline, FSIS stated that an establishment that chooses to terminate its HIMP waiver or has an HIMP waiver terminated at six months after publication of the January 2008 **Federal Register** notice could apply for a waiver under SIP after a waiting period of nine months after termination of the old waiver (73 FR 4772). This new timeline will also apply to establishments operating under waivers that affect the slaughter process. Under this new timeline, all of these establishments will have 120 days from publication of this notice to decide whether they will continue to operate under the waiver by complying with the provisions of SIP or else operate without a waiver. Any establishment that chooses not to participate in SIP and thereby drop its waiver should give FSIS written notice of when and how it will return to operating without a waiver in order for the Agency to plan to restructure inspection responsibilities at that establishment. If the establishment does not provide such written notice, FSIS will notify the establishment of the steps necessary to return the establishment to operating without a waiver.

During that 120-day period, establishments desiring to continue these waivers under SIP will need to apply for SIP and agree to comply with its provisions. FSIS encourages these establishments to begin submitting applications to participate in SIP as soon as possible. After the 120-day period following this **Federal Register** notice, HIMP, OLR, or any other slaughter process waivers will only be continued if the establishment has agreed to participate in SIP.

Establishments that have applied for and received other waivers under SIP terms and conditions and have been operating with SIP procedures are to begin formally submitting their microbial testing data to FSIS within 60 days of this notice.

Response to Comments on Publication of Salmonella Sample Set Results as Described in the Federal Register Notice of January 28, 2008

Time for Comments

Several comments stated that the comment period of 30 days provided in the notice was too brief to allow for proper consideration of the issues described there.

Response: As stated above, the Agency is re-opening the comment period for certain issues involved with SIP that have not yet been resolved.

FSIS notes, however, that publication of *Salmonella* verification sample set results by establishment was first presented publicly in the **Federal Register** notice of February 27, 2006, and was extensively discussed in the notice of January 28, 2008. The Agency also discussed publication of establishment *Salmonella* results at a public meeting on August 7, 2007 (<http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/2007-0026.htm>), and presented detailed plans for publication in its Constituent Update of August 31, 2007 (http://www.fsis.usda.gov/News_&_Events/Const_Update_083107/index.asp). Given this history, FSIS believes that the notice's 30-day period for comments on publication of establishment *Salmonella* results was appropriate.

Categories

Some comments asserted that the performance Categories 1, 2, and 3 used to determine posting are arbitrary and not founded in public health science.

Several comments stressed that an establishment with only one current completed sample set that is at or below half of the performance standard should not be in Category 2 simply because it lacks two completed sample sets at the level required for Category 1. Several comments argued that requiring two successive sets at or below half the performance standard for Category 1 is inconsistent with determining Category 2 or 3 status by a single set, the most recent one.

One comment from a public interest group saw no need to publish results from Category 1 establishments, although a comment from another public interest group stated that results from Category 1 establishments should be published as well as results from establishments in Categories 2 and 3. A similar point was made in another comment arguing that if establishment data are to be published at all, results should be reported for all categories. Two other comments stated that only Category 3 results should be published.

One comment asserted that no results should be published.

Response: The Agency stated in its February 2006 **Federal Register** notice that, as would be expected, establishments performing very well overall do so consistently and predictably. Establishments that perform less well overall are much less consistent and thus pose a greater concern for public health protection. Given these observed tendencies, the Agency believes that encouraging establishments to perform consistently at or below half the standard is a meaningful and practical approach to improving public health protection. Such encouragement is especially pertinent when a product class has shown a relatively high prevalence of *Salmonella*. In such a case, establishments aiming at a prevalence rate lower than the standard will tend to improve the performance of the overall product class. As stated above, this was shown in the Agency's experience after announcing performance categories in 2006 when 55–60 percent of non-compliant establishments moved to become compliant within two years.

FSIS presented information in the February 2006 notice indicating that the selection of the Category 1 and Category 2 criteria was based, in part, on long-term Agency experience showing a statistically significant difference in the likelihood that serotypes of *Salmonella* that are common causes of human illness are present in sample sets from Category 2 establishments versus those in Category 1. At that time, these differences were particularly evident for the young chicken class.

For any classes of raw products, a reduction of *Salmonella* by half or more based on the current performance standard would have practical implications for continuous improvement in the control of this enteric pathogen. When a new standard is established through a new baseline study and is published, FSIS expects to re-set the Category designations, again differentiating Category 1 from Category 2 by using the practical application of the “at or below half the standard” criterion.

The Agency agrees with the comment that an establishment with its last verification sample set at or below half the standard, but with the prior set above half but not exceeding the standard, should not simply be posted as a Category 2. The Agency has been categorizing these cases as “2T” with “T” standing for Transitional to Category 1. Similarly, an establishment with its last verification sample set at or

below half the standard, but with the prior set exceeding the standard, is also categorized as “2T.” This approach recognized that two sets needed to be at or below half the standard for Category 1, while still recognizing progress by transitional establishments. Beginning with the Quarterly Progress Report for April–June 2008, the aggregate Quarterly Progress Reports have presented such “2T” establishments separately from Category 2 establishments.

Also beginning with the second quarter 2008 Progress Report, FSIS ceased counting in aggregate totals any establishment with only one completed set. Since 2006 the aggregate Quarterly Progress Reports had reflected all results and included in either Category 2 or Category 3 any establishment that had not attained a Category 1 classification by having its two most recent FSIS sets at or under half the standard. Thus, the quarterly aggregate reports included establishments that had completed only one set and had not exceeded the standard in that set in Category 2, and included establishments that had completed only one set but did exceed the standard in that set in Category 3. To clarify these matters, the Agency determined that it would neither post an establishment with only one completed FSIS sample set (e.g., new establishments) nor count that establishment in the aggregate Category 2 or 3 totals. With the new *Salmonella* and *Campylobacter* performance standards going into effect in July 2011 (76 FR 15282), FSIS will transfer existing data for establishments with two sample sets completed for calculation of categories.

Statistical Standards

Some comments asserted that the number of positive samples acceptable per *Salmonella* sample set is too stringent in that an establishment operating either at the standard, or for Category 1 at or below half the standard, has an approximately 25 percent chance of exceeding the target level with any given sample set. These comments urged that the number of samples acceptable be increased to provide a lower chance of exceeding the target level when an establishment is operating over some period at the target level. Another comment conversely asserted that with product classes that have standards with odd numbers of acceptable positives, the Agency should round down to determine the “at or below half” criterion for inclusion in Category 1. For instance, the maximum number of positives acceptable out of 56 samples for the turkey carcass class has

been 13, and the Category 1 criterion was rounded up by the Agency to accept seven or fewer positive results rather than six or fewer positives.

Response: A prudent establishment should strive to operate with more effective process control over time at a relatively lower level of positive samples if it is to preclude exceeding its target level. This is the case because FSIS standards have been traditionally set with a certain probability of failure for an establishment operating in fact precisely at the standard. For this reason, an establishment wishing to avoid any failures should aim its process control efforts at achieving a performance below the standard. The Agency views this relative stringency as a necessary and important incentive to improving performance in controlling *Salmonella*.

In addition, FSIS is clarifying that its intent was not to round up the number of acceptable positives. When this practice of rounding up was called to its attention, FSIS changed its practice to rounding down. Thus, FSIS now rounds down for standards with an odd number of acceptable positives. For example, the acceptable number of *Salmonella* positives for turkey carcasses had been set at six rather than seven positives out of 56 samples. The Agency rounds down in determining the standard for any product class with a standard that accepts an odd number of positive samples.

Time Lag for Establishment Category Change

Several comments argued that publishing the names of establishments in Categories 2 and 3 each month is unfair and unrepresentative, in that FSIS sample set results may be months old before they are superseded by another set, and that the establishment has no way to demonstrate significant improvement in the meantime. Some comments stated that the Agency should use establishment data to evaluate an establishment's significant improvement and thus recognize movement to a higher degree of control sooner than would be possible with use of FSIS data alone for this determination. These comments noted that something like this approach is envisioned with SIP. One comment stated that an establishment's published category standing should be updated immediately upon movement between categories rather than monthly.

Response: Monthly updates are sufficiently frequent to provide current information concerning the *Salmonella* category status of establishments. The Agency schedules verification sample

sets for Category 3 establishments first, followed by Category 2, and then Category 1. Furthermore, the Agency intends to use unannounced, small-set sampling to verify the consistent performance of all Category 1 establishments. In this way, improvement in performance that would lead to movement from Category 3 to 2 or from Category 2 to 1 is registered as soon as possible. FSIS notes that an establishment's consistent performance at half the standard or lower would preclude any concern on this score.

Any movement of an establishment from Category 2 or 3 into Category 1 must be based upon FSIS testing. The verification program is based on Agency *Salmonella* testing, and at this time, FSIS can see no reason to modify that design. Moreover, as stated above, FSIS tests frequently enough, particularly for Category 3 establishments, that there is no need for FSIS to rely on the establishment's testing. Under the *Salmonella* and *Campylobacter* standards (76 FR 15282) to be implemented in July 2011, FSIS will not publish names of Category 2 poultry establishments. To date, poultry establishments are the only classes of raw product that have been published.

Qualitative vs. Quantitative Data

Several comments noted that FSIS *Salmonella* verification sampling data are qualitative (presence/absence) rather than quantitative (number of microorganisms present), thus giving no indication of actual concentration or dose level.

Response: The Agency's baseline studies have included enumeration of microbial populations of positive *Salmonella* samples. After analyzing the two most recent year long poultry microbiological baselines (2008 and 2009), the Agency has noted that the number of microorganisms present in positive samples did not vary to any significant degree from the positive samples analyzed in the older surveys, despite a significant decline in prevalence from the older surveys. Therefore, FSIS does not believe that there is a compelling need to enumerate positive *Salmonella* samples.

Salmonella Serotypes of Human Health Significance

Some comments stated that simply publishing the number of positive samples does not convey the true potential threat to public health because an establishment may have multiple samples that are positive for *Salmonella* serotypes that are rarely associated with human illness.

Response: The Agency agrees that identifying *Salmonella* serotypes of human health significance is an important factor in public health protection. Consequently, FSIS includes serotype information when notifying establishments of sample results and in the End-of-Set Letter detailing the overall results of a completed FSIS set. FSIS also publishes aggregate serotype data in an annual report (http://www.fsis.usda.gov/Science/Q1-4_2008_Salmonella_Serotype_Results/index.asp).

The serotypes most commonly found in FSIS-regulated products have all been associated with human illness. For example, *S. Kentucky* is the most commonly reported serotype in FSIS-regulated young chicken products, and the CDC reported that in 2006 this serotype was associated with 123 illnesses, ranking it at 33 in the top 50 serotypes associated with illnesses that year. Research has shown that when *Salmonella* contamination is present in a product sample, multiple serotypes are not uncommon. Our current methodology used for sample analysis allows FSIS to determine the presence of any *Salmonella*, regardless of serotype. One bacterial colony is tested to determine serotype and is reported to establishments. This single colony is not necessarily the only serotype present, nor is it necessarily the most common serotype in the product. The Agency uses the *Salmonella* verification program as a measure of process control, not an indicator of the prevalence or diversity of different *Salmonella* serotypes on FSIS-regulated products. This measure of process control is appropriate because current interventions and technologies for the reduction of *Salmonella* target all serotypes; so the presence of any one serotype indicates a possible lapse in process control, which could allow the outgrowth of any serotype that might be present in the product.

Domestic and International Trade Effects

Two comments urged the Agency to consider the possible negative effects posting results that would have on the international competitiveness of the U.S. meat and poultry industry. Commenters worried that publication could lead to unwarranted trade barriers on the grounds of food safety.

Response: Industry performance has shown that meat and poultry establishments have adequate means to attain Category 1 status. Improved international trade competitiveness is likely to result from a lower incidence of *Salmonella* and the production of

fewer products positive with serotypes of human health concern. FSIS notes that completed sample set results have always been available through FOIA, but the Agency has not seen any marked increases in foreign FOIA requests for such data. Given these facts, FSIS does not believe that establishments have significant grounds for concern because of Web publication of completed sample set results.

Paperwork Reduction Act

FSIS has reviewed the paperwork and recordkeeping requirements in this notice in accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and has determined that the paperwork requirements constitute a new information collection.

Title: Salmonella Initiative Program (SIP).

Type of Collection: New.

Abstract: Currently, nine establishments are operating under SIP. The information collection burden incurred by these nine establishments is covered under the Procedures for the Notification of New Technology information collection currently approved by OMB (0583-0127).

The Agency is selecting no more than five establishments that applied in 2008 to receive waivers of regulations restricting line speeds. If necessary, FSIS will re-open the application process until five establishments have been selected. The information collection burdens incurred by these establishments will also be included under 0583-0127.

This notice opens SIP to all slaughter establishments, and all establishments receiving a waiver must participate in SIP. Data collected by the additional number of establishments coming under the expanded SIP program will constitute a new information collection.

SIP offers incentives to meat and poultry slaughter establishments to control *Salmonella* in their operations. SIP does this by granting waivers of regulatory requirements with the condition that establishments test for *Salmonella*, *Campylobacter* (if applicable), and generic *E. coli* or other indicator organisms and share all sample results with FSIS. If the establishment's results show it is not meeting the Agency's current performance standards for turkeys or young chickens, it is to increase testing, determine whether its waiver is affecting its public health protection performance, and take steps to regain process control to minimize the presence of pathogens of public health concern. Establishments currently operating under regulatory waivers will

have to participate in SIP or drop their waivers. Establishments operating under waivers through the HACCP-based Inspection Models Project (HIMP) will continue to operate as HIMP establishments but will have to conduct new testing under SIP.

SIP is now open to all slaughter establishments. Establishments that have received waivers under SIP terms and conditions are to begin submitting microbial testing data to FSIS within 60 days of this notice. Establishments currently operating under waivers for on-line reprocessing or HIMP or any other slaughter process will have 120 days from publication of this notice to participate in SIP or else drop their waivers and return to conventional inspection.

FSIS will begin evaluating young chicken and turkey slaughter establishments operating with SIP waivers under new performance standards with sample sets beginning in or after July 2011.

Estimate of Burden: FSIS estimates that annually it will take approximately 686.6 hours per respondent.

Respondents: Official slaughter establishments that are under a waiver.

Estimated number of Respondents: 300

Estimated number of Responses per Respondent: 2,081

Estimated Total Annual Burden on Respondents: 206,000 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065, South Building, Washington, DC 20250, (202) 720-0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of

Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this document, FSIS will announce it online through the FSIS Web page located at http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/. Options range from recalls to export information, regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password-protect their accounts.

Done at Washington, DC, on July 8, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011-17625 Filed 7-12-11; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Mines Management Inc. Montanore Project, Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Supplemental Draft Environmental Impact Statement.

SUMMARY: In February of 2009, The Department of Agriculture, Forest Service, Kootenai National Forest, in conjunction with Montana Department of Environmental Quality, issued a Draft Environmental Impact Statement for the Montanore Project. In response to public comment, the agencies revised the agencies' mine alternatives (Alternatives 3 and 4), and transmission line alignments (Alternatives C, D, and E). Most of the revisions to the mine alternatives addressed issues associated with water quality. The agencies' proposed monitoring and mitigation plans were also revised. Additional information and analyses concerning these alternatives and their effects on resources are contained in a Supplemental Draft Environmental Impact Statement (SDEIS). The project is located on public and private lands approximately 18 miles south of Libby, Montana. Mines Management, Inc. (MMI) submitted a proposed Plan of Operations and an application for a Hard Rock Operating Permit on January 3, 2005, pursuant to Forest Service locatable mineral regulations 36 CFR Part 228, Subpart A, and the State of Montana Metal Mine Reclamation Act MCA 82-4-301 *et seq.*

DATES: Under 40 CFR 1502.9(c)(4), there is no formal scoping period for the proposed action. The Supplemental Draft EIS is expected to be available for public review and comment in July, 2011 and the Final EIS is expected in 2012.

FOR FURTHER INFORMATION CONTACT: Lynn Hagarty, Project Coordinator, Kootenai National Forest, Supervisor's Office, 31374 U.S. Highway 2, Libby, Montana 59923. Phone (406) 293-6211, or e-mail at lhagarty@fs.fed.us, or consult <http://www.fs.fed.usda.gov/goto/kootenai/projects>.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Additional Information

The 2009 Draft EIS can be reviewed at: <http://www.fs.fed.usda.gov/goto/kootenai/projects>.

Mines Management Inc. owns two patented mining claims (HR 133 & HR 134) with mineral rights that extend beneath the Cabinet Mountains Wilderness.

All surface disturbances including mill facilities, transmission lines, access

roads, and the tailings disposal impoundment would be located outside the Cabinet Mountains Wilderness area.

MMI proposes to construct the copper and silver underground mine and associated facilities, including the transmission line. Montanore Minerals Corp. (MMC), a wholly owned subsidiary of MMI, would be the project operator of the proposed Montanore Project. MMI has requested the KNF to approve a Plan of Operations for the Montanore Project. From the perspective of the DEQ, the mining operation is covered by a DEQ Operating Permit first issued to Noranda Minerals Corp. MMC has applied to the DEQ for a modification of the existing permit to incorporate aspects of the Plan of Operations submitted to the KNF that are different from the DEQ Operating Permit.

The Montanore Project Supplemental Draft EIS will provide additional information and disclosures concerning:

- Agency Mitigated Poorman Impoundment Alternative.
- Water use and management, Air Quality, Aquatic Life, and Financial Assurance.
- Revised Monitoring and Mitigation Plans for Alternatives 3 and 4.
- Geology, Groundwater Hydrology, Surface Water Hydrology, and Water Quality.
- Wetlands, Grizzly Bear Impacts.
- Discussion of those Resources Affected by a Change in the Transmission Line Alignments or where Additional Analysis was Completed.

Mine Alternatives

Alternative 1—No Action—No Mine

In this alternative, MMC would not develop the Montanore Project, although it is approved under DEQ Operating Permit #00150. The Montanore Project, as proposed, cannot be implemented without a corresponding Forest Service approval of a Plan of Operations.

Alternative 2—Proposed Action—MMC's Proposed Mine

The Montanore Project, as proposed by MMC, would consist initially of a 12,500 tons per day underground mining operation that would expand to a 20,000 tons per day rate. The surface mill would be located on National Forest System lands outside of the Cabinet Mountains Wilderness in the Ramsey Creek drainage. The ore body would be accessed from two portals located adjacent to the mill. Two ventilation portals, both located on private lands, would be utilized during the project. One ventilation portal

would be located in the upper Libby Creek drainage; the other would be located in the upper Rock Creek drainage near Rock Lake.

A 230-kilovolt electric transmission line would be constructed from Pleasant Valley (Sedlak Park) along U.S. Highway 2, and then routed up Miller Creek drainage to the project site.

The size of the ore body is approximately 135 million tons. Ore would be crushed underground and conveyed to the surface mill located near the Ramsey Creek portals. Copper and silver minerals would be removed from the ore by a flotation process. Tailings from the milling process would be transported through a pipeline to the tailings disposal impoundment located in the Little Cherry Creek drainage, a distance of about four miles from the proposed mill site.

Access to the mine and all surface facilities would be via U.S. Highway 2 and the existing Bear Creek road. MMC would upgrade an estimated 11 miles of the Bear Creek road to standards specified by the agencies. Silver/copper concentrate from the mill would be shipped by truck to a rail siding in Libby, Montana. The concentrate would then be transported by rail to an out-of-state smelting facility.

Mining operations are projected to continue for an estimated 15 years once facility development is completed and actual mining operations commence. The mill and mine would operate on a three shifts per day, seven days per week, yearlong schedule.

An estimated seven million tons of ore would be produced annually during a 350-day production year. Employment numbers are estimated to be 450 people when at full production. An annual payroll of \$12 million is projected for full production periods. MMC's proposed permit area utilizes approximately 3,000 acres of National Forest System land and approximately 200 acres of private land for the proposed mine and associated facilities including the power transmission line. All surface activities would be outside designated wilderness. MMC has developed a reclamation plan to rehabilitate the disturbed areas following the phases associated with exploration, construction, operation, and ultimately, mine closure.

Alternative 3—Agency Mitigated Poorman Impoundment Alternative

Alternative 3 would incorporate modifications and mitigating measures proposed by the agencies to reduce or eliminate adverse environmental impacts. These measures are in addition to, or instead of the mitigations

proposed by MMC. The Libby Adit evaluation program would be the initial phase of the project and would be completed before construction of any other project facility. All other aspects of MMC's mine proposal would remain as described in Alternative 2.

Alternative 3 involves changes to four major mine facilities: location of tailings disposal site changed from the Little Cherry drainage to the Poorman drainage, processing plant site changed from Ramsey Creek to the area between Libby Creek and Ramsey Creek, the addition of two more adit sites up Libby Creek, treatment of water from the adits by water treatment facility instead of by land application disposal (LAD). MMC would use the same roads as Alternative 2 to access operations. A new road, 3.2 miles in length, would be constructed near the tailings impoundment parallel to the Bear Creek Road #278 to allow for public traffic separate from haul traffic in that area.

Alternative 4—Agency Mitigated Little Cherry Impoundment Alternative

Alternative 4 would be similar to Alternative 3, but would have modifications to MMC's proposed Little Cherry Creek Tailings Impoundment as part of the alternative. All other modifications and mitigations described in Alternative 3, other than those associated with the Poorman Tailings Impoundment Site, would be part of Alternative 4. As in Alternative 3, the Libby Adit evaluation program would be the initial phase of the project and would be completed before construction of any other project facility.

Transmission Line Alternatives

Alternative A—No Transmission Line, No Mine

Alternative B—MMC's Proposed Transmission Line (North Miller Creek Alternative)

Alternative C—R—Modified North Miller Creek Transmission Line Alternative

The route under Alternative C—R alternative has been modified in response to comment on the Draft EIS. This modification would use an alignment up and over a ridge between West Fisher Creek and Miller Creek, would increase the use of public land and reduce the length of line on private land.

Alternative D—R—Miller Creek Transmission Line Alternative

This modification was also developed following comment on the Draft EIS. The same alignment would be used as in Alternative C—R into the Miller Creek drainage, and then along NFS road

#4724 on the south side of Miller Creek to increase the use of public land and reduce the use of private land. Routing the alignment along Miller Creek addressed the issue of effects on threatened and endangered species.

Alternative E—R—West Fisher Creek Transmission Line Alternative

The primary difference between Alternative E—R and Alternative B is routing the line on the north side of West Fisher Creek to minimize effects to core grizzly bear habitat. As in Alternative D—R, this alternative would follow an alignment approximately 0.5 miles east of Howard Lake. Wooden H-frame structures would be utilized on this alternative in most locations. These wooden H-frames allow for longer spans resulting in fewer structures and access roads, which would minimize visibility from Howard Lake.

Lead and Cooperating Agencies

The U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Montana Department of Natural Resources and Conservation, Confederated Salish and Kootenai Tribes, Kootenai Tribe of Idaho, and the Bonneville Power Administration have either jurisdiction or interest and will participate as cooperating agencies or government entities in the preparation of this EIS. The USDA Forest Service and the Montana Department of Environmental Quality have agreed to be the Lead Agencies for this project. Other governmental agencies and any public that may be interested in or affected by the proposal are invited to comment on the Supplemental Draft EIS when it is released for comment.

Responsible Officials

Paul Bradford, Forest Supervisor, Kootenai National Forest, 31374 U.S. Hwy 2, Libby, MT 59923, and Richard Oppen, Director, Montana Department of Environmental Quality, Director's Office, 1520 E 6th Ave., Helena, MT 59620–9601, will be jointly responsible for the EIS. These two officials will make a decision regarding this proposal after considering comments and responses pertaining to environmental consequences discussed in the Final EIS and all applicable laws regulations, and policies. The decision of a selected alternative and supporting reasoning will be documented in a Record of Decision.

Nature of Decision To Be Made

The nature of the decision to be made is to select an action that meets the legal rights of the proponent, while protecting

the environment in compliance with applicable laws, regulations and policy. The Forest Supervisor will use the EIS process to develop the necessary information to make an informed decision as required by 36 CFR Part 228 Subpart A. The Director of DEQ will use the EIS process in a similar fashion to make informed decisions on a number of state permits and permit modifications according to state laws and regulations. Based on the alternatives developed in the EIS, the following are possible decisions:

- (1) An approval of the Plan of Operations as submitted;
- (2) An approval of the Plan of Operations with changes, and the incorporation of mitigations and stipulations that meet the mandates of applicable laws, regulations, and policy
- (3) Notification to MMC that the KNF Supervisor will not approve the Plan of Operations until a revision to the proposed Plan of Operations that meets the mandates of applicable laws and regulations is submitted

Permits or Licenses Required

Various permits and licenses are needed prior to implementation of this project. Permits or licenses required by the issuing agencies identified for this proposal are:

- Approval of Plan of Operations from the Kootenai National Forest.
- Modification to Hardrock Operating Permit #00150 from the Montana Department of Environmental Quality.
- Air Quality Permit from the Montana Department of Environmental Quality.
- Storm Water Permit and Montana Pollution Discharge Elimination System (MPDES) Permit from the Montana Department of Environmental Quality.
- 404 Permit from the U.S. Army Corps of Engineers.
- Water Rights Permit from the Montana Department of Natural Resources and Conservation.
- 310 Permit from the Montana Department of Fish, Wildlife and Parks and Lincoln County Conservation District.
- Special Use Permits from the Kootenai National Forest.
- Major Facility Siting Act (MFSA) Certificate of Compliance from the Montana Department of Environmental Quality.

Public Comment Process

A Supplemental Draft EIS will be prepared for comment. The comment period on the Supplemental Draft EIS ends 45 days from the date the Environmental Protection Agency publishes the notice of availability in

the **Federal Register**. This is estimated to occur in July of 2011. The Forest Service, in conjunction with Montana State agencies, will hold a public meeting in Libby, Montana, during August or September of 2011. Specific location and time of the meetings will be published in the local newspapers approximately one week prior to the meeting date.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the information in the Supplemental Draft EIS, comments should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Supplemental Draft EIS. Comments may also address the adequacy of the Supplemental Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal, and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: June 28, 2011.

Paul Bradford,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 2011-17653 Filed 7-12-11; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Medbow-Routt Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The MedBow-Routt Resource Advisory Committee will meet in Laramie, Wyoming. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review new project proposals and update RAC members on the progress of previously approved projects.

DATES: The meeting will be held July 28, 2011 from 10:30 a.m.–3:30 p.m.

ADDRESSES: The meeting will be held at Forest Supervisor's Office, 2468 Jackson Street, Laramie, Wyoming. Written comments should be sent to Phil Cruz, RAC DFO, 2468 Jackson Street, Laramie, Wyoming 82070. Comments may also be sent via email to pcruz@fs.fed.us, or via facsimile to 307-745-2467.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Supervisor's Office, 2468 Jackson Street, Laramie, Wyoming.

FOR FURTHER INFORMATION CONTACT:

Aaron Voos, RAC Coordinator, 2468 Jackson Street, Laramie, Wyoming 82070, 307-745-2323 or atvoos@fs.fed.us

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Review of the status of approved projects; discussion of travel reimbursement, review and discussion of new project proposal and public forum discussion. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff

before or after the meeting. Public input sessions will be provided and individuals who made written requests by July 15, 2011 will have the opportunity to address the Committee at those sessions.

Dated: July 5, 2011.

Phil Cruz,

Forest Supervisor.

[FR Doc. 2011-17582 Filed 7-12-11; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

National Forests In Mississippi, Tombigbee and Holly Springs Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tombigbee and Holly Springs National Forests Resource Advisory Committee will meet in Starkville, MS. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) and in compliance with the Federal Advisory Committee Act.

DATES: The meeting will be held on August 11, 2011, and will begin at 6 p.m.

ADDRESSES: The meeting will be held at the Mississippi State University College of Forest Resources, Tulley Auditorium, Thompson Hall, 775 Stone Blvd., Mississippi State, MS, 39762-9690. Written comments should be sent to Robert Claybrook, Tombigbee National Forest, P.O. Box 912, Ackerman, MS 39735. Comments may also be sent via e-mail to rclaybrook@fs.fed.us, or via facsimile to 662-285-3608.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Tombigbee National Forest, 6052 Hwy 15, South Ackerman, MS 39735. Visitors are encouraged to call ahead to 662-285-3264 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

Robert Claybrook, RAC coordinator, USDA, Tombigbee National Forest, P.O. Box 912, Ackerman, MS 39735; (662) 285-3264; e-mail rclaybrook@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome; (2) Review and approval of the minutes from the last meeting; (3) Presentation, Consideration, and Approval of project proposals; (4) Set next meeting date; and (5) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: June 25, 2011.

Caren Briscoe,
Designated Federal Officer.

[FR Doc. 2011-17405 Filed 7-12-11; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

National Forests in Mississippi, Tombigbee and Holly Springs Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tombigbee and Holly Springs National Forests Resource Advisory Committee will meet in Starkville, MS. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) and in compliance with the Federal Advisory Committee Act.

DATES: The meeting will be held on July 14, 2011, and will begin at 6 p.m.

ADDRESSES: The meeting will be held at the Mississippi State University College of Forest Resources, Tulley Auditorium, Thompson Hall, 775 Stone Blvd., Mississippi State, MS 39762-9690. Written comments should be sent to Robert Claybrook, Tombigbee National Forest, P.O. Box 912, Ackerman, MS 39735. Comments may also be sent via e-mail to rclaybrook@fs.fed.us, or via facsimile to 662-285-3608.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Tombigbee National Forest, 6052 Hwy 15 South, Ackerman, MS 39735. Visitors are encouraged to call ahead to 662-285-3264 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Robert Claybrook, RAC coordinator, USDA, Tombigbee National Forest, P.O. Box 912, Ackerman, MS 39735; (662) 285-3264; e-mail rclaybrook@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome/Introductions (2) Question and Answer Period (3) Election of officers (4) Set next meeting date. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: June 28, 2011.

Caren Briscoe,
Designated Federal Officer.

[FR Doc. 2011-17406 Filed 7-12-11; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Shoshone Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shoshone Resource Advisory Committee (Committee) will meet in Thermopolis, Wyoming. The Committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review Title II project proposals and select one or more to recommend to the Designated Federal Official.

DATES: The meeting will be held July 26, 2011, 9 am.

ADDRESSES: The meeting will be held at Big Horn Federal Savings, 643 Broadway, Thermopolis, Wyoming.

FOR FURTHER INFORMATION CONTACT: Olga Troxel, Resource Advisory Committee Coordinator, Shoshone National Forest Supervisor's Office, (307) 578-5164. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review new set of Title II project proposals (2) Review financial information (3) Discuss plans for project field visits. Persons who wish to bring

related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided.

Dated: July 6, 2011.

N. Bryan Armel,
Acting Forest Supervisor.

[FR Doc. 2011-17637 Filed 7-12-11; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA): Section 515 Rural Rental Housing Program for New Construction or Purchase and Rehabilitation of Existing Rural Multi-Family Properties in Fiscal Year 2011

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: U.S. Department of Agriculture (USDA) Rural Development administers the programs of the RHS. This NOFA announces the timeframe to submit pre-applications for Section 515 Rural Rental Housing (RRH) loan funds, including pre-applications for the nonprofit set-aside for eligible nonprofit entities, set-aside for Rural Economic Area Partnership (REAP), and the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act).

This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration. For FY 2011, the Agency will provide additional scoring points to those proposals involving energy initiatives.

DATES: The deadline for receipt of all pre-applications in response to this NOFA is 5 p.m., local time for each USDA Rural Development State Office, 45 days from the published date of this Notice. The pre-application closing deadline is firm as to date and hour. USDA Rural Development will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due pre-applications will not be accepted.

FOR FURTHER INFORMATION CONTACT:

Applicants may contact the applicable Rural Development State Office serving the State where the project will be built in order to submit a pre-application. The State Office will provide further information pertaining to the application process, copy of the initial application package, and a list of designated places established under 7 CFR 3560.57 for new Section 515 facilities. A listing of USDA Rural Development State Offices, addresses, telephone numbers, and contact person can be found below in Section XI of this Notice.

For general information, applicants may contact Melinda Price, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Federal Building Room 507, 200 North High St., Columbus, Ohio 43215-2418, telephone (614) 255-2403 (not a toll free number), or (800) 877-8339 (TDD-Federal Information Relay Service), or via e-mail melinda.price@wdc.usda.gov.

For questions regarding design and construction project delivery methods, questions about any of the energy efficiency and environmental sustainability programs, as well as questions about design and construction contracts should be directed to Carlton Jarratt, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Culpeper Building, Suite 121, 1606 Santa Rosa Road, Richmond, Virginia 23229, telephone (804) 287-1524 (not a toll free number) or (800) 877-8339 (TDD-Federal Information Relay Service), or via e-mail carlton.jarratt@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:**Programs Affected**

The RRH program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Paperwork Burden Act

The information collection requirements contained in this Notice have received approval from the Office of Management and Budget (OMB) under Control Number 0570-0190.

Overview

Funding Opportunity Title: Notice of Funding Availability (NOFA): Section 515 Rural Rental Housing Program for New Construction or Purchase and Rehabilitation of Existing Rural Multi-Family Properties in Fiscal Year 2011.

Announcement Type: Inviting pre-applications from eligible applicants for Fiscal Year (FY) 2011 funding.

Catalog of Federal Domestic Assistance Number (CFDA): 10.415 and 10.427.

DATES: The deadline for receipt of all pre-applications in response to this NOFA is 5 p.m., local time for each USDA Rural Development State Office, August 29, 2011. The initial application closing deadline is firm as to date and hour. USDA Rural Development will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and

postage due pre-applications will not be accepted.

The Department of Defense and Full Year Continuing Appropriation Act, 2011 (Pub. L. 112-20), (April 15, 2011) details the level of funding for the remainder of fiscal year 2011. The Section 515 Multi-Family Housing (MFH) program is authorized by the Housing Act of 1949, as amended (42 U.S.C. 1485) and provides Rural Development with the authority to make loans for low-income MFH.

Program Administration**I. Authorities**

Section 515 of the Housing Act of 1949, as amended, (42 U.S.C. 1485) provides USDA Rural Development with the authority to make loans to any individual, corporation, association, trust, Indian Tribe, public or private nonprofit organization, which may include a faith-based or community organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental assistance (RA) is a tenant subsidy for very-low and low-income families/ persons residing in rural rental housing facilities with USDA Rural Development financing. \$2,025,940 in RA will be available for new construction in Fiscal Year (FY) 2011.

II. Description of 515 Funding Opportunity

The total amount available for FY 2011 for Section 515 Funding is \$18,036,667.89:

Non-Restricted	\$12,036,667.89
Set-aside for non-profits	2,000,000.00
Set-aside for Underserved Counties and Colonias	2,000,000.00
Set-aside for REAP Zones	2,000,000.00
Total for Section 515 New Construction	18,036,667.89

All pre-applications for funding must qualify under one of the three Set-asides or as a Non-restricted. Qualifications for the Set-asides are described in paragraph VII below. Those pre-applications with the highest scores will be funded first. Any unused funds will revert to non-restricted status by September 15, 2011.

III. Award information

A. Individual loan requests should not exceed \$1 million. This applies to

regular Section 515 funds and set-aside funds.

B. No State may receive more than 20 percent of the total amount available, including set-aside funds.

IV. Eligibility Information

Applicants must meet the eligibility criteria as determined under 7 CFR 3560.55.

V. Pre-Application and Submission Information

A. Pre-application Requirements: All pre-applications must meet the requirements of 7 CFR 3560.56, as well as comply with the provisions of this Notice. Pre-applications can be submitted either electronically using the Section 515 Pre-application form as found at (<http://www.rurdev.usda.gov/rhs/mfh/MPR/MPRHome.htm>) or as a hard copy with the appropriate Rural

Development State Office where the project will be located.

Note: Submission of the electronic Section 515 Pre-application form does not constitute submission of the entire pre-application package which requires additional forms and supporting documentation as listed in Section V of this Notice. Although applicants are encouraged to submit the pre-application form electronically, the complete package in its entirety must still be submitted to the local State Office.

Hard copy pre-applications that are submitted to a USDA Rural Development State Office will be date and time stamped to evidence timely or untimely receipt, and, upon request, provide the applicant with a written acknowledgment of receipt. A list of State Office contacts may be found in Section XI of this Notice. Incomplete pre-applications will not be reviewed and will be returned to the applicant within 30 days of receipt. No pre-application will be accepted after 5 p.m., local time, on the pre-application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

Applicants are encouraged but not required, to provide an electronic copy of all hard copy forms and documents submitted in the pre-application/application package as requested by this Notice. The forms and documents must be submitted as read-only PDF Adobe Acrobat files on an electronic media such as CDs, DVDs or USB drives. For each electronic device submitted, the applicant should include a Table of Contents of all documents and forms on that device. The electronic device should be submitted to the local Rural Development MFH State Office Contact as listed in Section XI of this Notice.

Note: If you receive a loan under this Notice, USDA reserves the right to post all information not covered under the Privacy Act and submitted as part of the pre-application package on a public Web-site with free and open access to any member of the public.

B. Submission Requirements: Each pre-application shall include the information, documentation, forms and exhibits required by 7 CFR 3560.56, and the provisions of this Notice. Documents and information required in the pre-application package are described as follows:

1. Documents to establish applicant eligibility:

i. Form SF 424, "*Application for Federal Assistance*".

ii. Form RD 410-9, "*Statement Required by Privacy Act (for individuals)*".

iii. Form RD 400-4, "*Assurance Agreement*".

iv. Form HUD 2530, "*Previous Participation Certification*".

v. Current (within 6 months) financial statements with the following paragraph certified by an authorized individual, agent or representative with the legal authority to do so: "I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part."

vi. Check for \$28 from individual applicants, and \$40 from entity applicants made out to U.S. Department of Agriculture. This will be used to pay for credit reports obtained by the USDA Rural Development.

vii. Statement signed by applicants that they will pay any cost overruns.

viii. If an entity applicant is selected for further processing, the Agency will require additional documentation as set forth in a Conditional Commitment in order to verify the entity has the legal and financial capability to carry out the obligations of the loan.

2. Documents to establish project feasibility. The applicant must provide the following:

i. *Market feasibility documentation:* Either a market study or a market survey, as appropriate.

ii. Type of project and structures proposed (total number of units by bedroom size, size of each unit type, size and type of other facilities).

iii. *Schematic drawings:* (Because projects are expected to be in pre-design or very early schematic design for pre-application purposes, these drawings may be prepared only as preliminary sketches. It is expected that teams will be working in an integrated design method and therefore there will be changes to these sketches to meet energy-efficiency goals, if any).

(a) Site plan, including contour lines; floor plan of each living unit type and other spaces, such as laundry facilities, community rooms, stairwells, etc.;

(b) Building exterior elevations;

(c) Typical building exterior wall section; and

(d) Plot plan.

iv. Description and justification of related facilities, and a schedule of separate charges for related facilities. Related facilities include community rooms that can be used by tenants and

management at no additional charge to the tenants.

v. Type and method of construction (owner builder, negotiated bid, or contractor method).

vi. Statement of estimated costs (Form RD 1924-13, "*Estimate and Certificate of Actual Costs*"). The selection of the contractor must be done through the process established in 7 CFR part 1924.

vii. Statement of proposed management.

viii. Congregate services package/plan (if applicable).

ix. Statement of support from other Government services providers to the project (congregate housing only).

x. Response to the Uniform Relocation Assistance Act (if applicable).

xi. In order to receive points for energy initiatives, the pre-application must include resumes of qualified professionals, plans for an initial design charrette and post-construction operations, and maintenance training for property managers, site managers and tenants.

3. Documents for project financing. The applicant must provide the following:

i. Statement of budget and cash flow (applicant completes Form RD 3560-7, "*Multiple Family Housing Project Budget/Utility Allowance*"), including type of utilities and utility allowance, if applicable, and any contribution to the reserve account.

ii. Congregate services charges (if applicable).

iii. Status of efforts to obtain leveraged funds.

iv. Proposed construction financing (interim or multiple advances; if interim financing, letter of interest from intended lender).

4. Documents for environmental and site information:

i. Form RD 1940-20, "*Request for Environmental Information*".

ii. Evidence of compliance with Executive Order 12372 (A-95) (if applicable). Form SF 424 is sent to a clearinghouse for intergovernmental review.

iii. A copy of the American Society for Testing and Materials (ASTM) Phase I Environmental Site Assessment to cover environmental due diligence. The ASTM Phase I Environmental Site Assessment will be obtained from the company or person who performs the environmental site assessment.

iv. Map showing location of community services such as schools, hospitals, fire and police departments, shopping malls and employment centers.

v. Evidence of submission of the project description to the State Housing

Preservation Office with request for comments.

vi. The applicant's comments regarding relevant offsite conditions that may impact the project.

vii. The applicant's explanation of any proposed energy efficiency components.

5. Fillable forms to be included in the pre-application package may be found at the following links:

i. Form SF 424, Application for Federal Assistance, which can be found online at: <http://www.cops.usdoj.gov/files/ric/publications/sf-424.pdf>.

ii. Form RD 1940–20, “Request for Environmental Information”, which can be found online at: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1940-20.PDF>;

iii. Form HUD 2530, Previous Participation Certification, which can be found online at: <http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf>;

iv. Form RD 1924–13, “Estimate and Certificate of Actual Costs”, which can be found online at: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1924-13.PDF>;

v. Form RD 400–4, “Assurance Agreement”, which can be found online at: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF>.

The following required forms are fillable and are available online but require e-authentication access. If the applicant does not have e-authentication access, the applicable State Office (Section XI) must be contacted for instructions and permission to obtain access or a copy of the form.

vi. Form RD 3560–7, “Multiple Family Housing Project Budget/Utility Allowance”: https://formsadmin.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD3560-0007_060500V01.pdf;

vii. Form RD 410–9, “Statement Required by the Privacy Act” (for individuals only) <https://formsadmin.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD0410-0009.pdf>.

Applicants are encouraged, but not required, to include a checklist and to have their pre-applications indexed and tabbed to facilitate the review process. The local Rural Development State Office will base its determination of completeness of the pre-application and the eligibility of each applicant on the information provided in the pre-application. All applicants will receive a letter notifying them of their selection or rejection for further processing. Applicants that are selected will be

given instructions on how to proceed, following the procedures established in 7 CFR part 3560. Applicants that are not selected will be provided appeal rights under 7 CFR part 11.

VI. Selection Process

An amount of \$12,036,667.89 is available for Section 515 non-restricted funding. Pre-applications will be accepted for loan requests to finance the new construction of a Section 515 property, or the purchase and substantial rehabilitation of non-program RRH and related facilities in rural areas. Pre-applications will be assigned points and will be scored based upon certain criteria as described in the following paragraphs of this section. Pre-applications will then be ranked on a national basis and selected for further processing in rank order.

Pre-applications will receive points for the following:

A. *Energy Initiatives* Properties may receive a maximum of 42 points for energy initiatives. Properties will be classified into two categories for the purposes of scoring: New Construction and Purchase and Rehabilitation. Points can only be earned under one of these categories. Properties in either category also may receive points for Energy Generation and Green Property Management.

1. *Energy Conservation for New Construction* (maximum 32 points). New construction projects may be eligible for up to 32 points when the pre-application includes a written certification by the applicant to participate in the following energy efficiency programs. The points will be allocated as follows:

i. Participation in the Department of Energy's Energy Star for Homes program (10 points). http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_multifamily_units.

ii. Participation in the Green Communities program by the Enterprise Community Partners. (10 points) <http://www.enterprisecommunity.org>.

iii. Participation in one of the following two programs will be awarded points for certification.

Note: Each program has four levels of certification. State the level of certification that the applicant plans will achieve in their certification:

(a.) LEED for Homes program by the United States Green Building Council (USGBC): <http://www.usgbc.org/homes>.

(1) Certified Level (4 points), OR

(2) Silver Level (6 points), OR

(3) Gold Level (8 points), OR

(4) Platinum Level (10 points), OR

(b.) The National Association of Home Builders (NAHB) ICC 700–2008 National

Green Building Standard TM: <http://www.nahb.org>.

(1) Bronze Level (4 points), OR

(2) Silver Level (6 points), OR

(3) Gold Level (8 points), OR

(4) Emerald Level (10 points).

iv. Participation in local green/energy efficient building standards; Applicants, who participate in a city, county or municipality program, will receive an additional 2 points. The applicant should be aware of and look for additional requirements that are sometimes embedded in the third-party program's rating and verification systems. (2 points)

2. *Energy Conservation for Purchase and Substantial Rehabilitation of an Existing Multifamily Property* (maximum 32 points). Pre-applications for the purchase and substantial rehabilitation of non-program MFH and related facilities in rural areas may be eligible to receive 32 points for the following initiatives.

Note: If you are participating in (i.) the Green Communities program, you may not receive additional points for items listed under (ii.). In other words, you may participate in (i.) and (iii.) or (ii.) and (iii.), but not all three:

i. Participation in the Green Communities program by the Enterprise Community Partners, <http://www.enterprisecommunity.org>, will be awarded 30 points for any project that qualifies for the program. (30 points) At least 30 percent of the points needed to qualify for the Green Communities program must be earned under the Energy Efficiency section of the Green Communities qualification program.

OR,

ii. Energy conservation points can be awarded for the following energy conservation measures only when the applicant is not enrolled in Green Communities and conservation measures are listed in the preliminary plans for substantial rehabilitation. (maximum 20 points).

(a) Replacement of heating, ventilation and air conditioning (HVAC) equipment with Energy Star qualified heating, ventilation and air conditioning (HVAC) equipment. (3 points).

(b) Replacement of windows and doors with Energy Star qualified windows and doors. (3 points).

(c) Additional insulation is added to the property to exceed the required R–Value of those building elements in that area of the country per the International Energy Conservation Code 2009. Two points will be awarded if all exterior walls exceed insulation code and 1 point will be awarded if attic insulation exceeds code for a maximum of 3 points. (3 points total).

(d) Reduction in building shell air leakage by at least 15% as determined

by pre- and post-rehab blower door testing on a sample of units. Building shell air leakage may be reduced through materials such as caulk, spray foam, gaskets, and house-wrap. Sealing of duct work with mastic, foil-backed tape, or aerosolized duct sealants can also help reduce air leakage. (3 points).

(e) 100 percent of installed appliances and exhaust fans are Energy Star qualified. (2 points).

(f) 100 percent of installed water heaters as Energy Star qualified. (2 points).

(g) 100 percent of toilets with flush capacity of more than 1.6 gallon flush capacity are replaced with new toilets with 1.6 gallon capacity or less, with EPA Water Sense label. (1 point).

(h) 100 percent of showerheads are replaced with new showerheads with EPA Water Sense label. (1 point).

(i) 100 percent of faucets are replaced with new faucets with EPA Water Sense label. (1 point).

(j) 100 percent Energy-efficient lighting including Energy Star qualified fixtures, compact fluorescent replacement bulbs in standard incandescent fixtures, and Energy Star Ceiling Fans. (1 point).

and,

iii. Participation in local green/energy efficient building standards. Applicants, who participate in a city, county or municipality program, will receive an additional 2 points. The applicant should be aware of and look for additional requirements that are sometimes embedded in the third-party program's rating and verification systems. (2 points).

3. *Energy Generation* (maximum 5 points). Pre-applications for new construction or purchase and substantial rehabilitation of non-program multi-family projects which participate in the Green Communities program by the Enterprise Community Partners or receive at least 8 points for Energy Conservation measures are eligible to earn additional points for installation of on-site renewable energy sources. Renewable, on-site energy generation will compliment a weathertight, well insulated building envelope with highly efficient mechanical systems. Possible renewable energy generation technologies include, but are not limited to: wind turbines and micro-turbines, micro-hydro power, photovoltaics (capable of producing a voltage when exposed to radiant energy, especially light), solar hot water systems and biomass/biofuel systems that do not use fossil fuels in production. Geo-exchange systems are highly encouraged as they lessen the total demand for

energy and, if supplemented with other renewable energy sources, can achieve zero energy consumption more easily. Points under this section will be awarded as follows. Projects with preliminary or rehabilitation building plans and energy analysis propose a 10 percent to 100 percent energy generation commitment (where generation is considered to be the total amount of energy needed to be generated on-site to make the building a net-zero consumer of energy) may be awarded points corresponding to their percent of commitment as follows:

(a) 0 to 9 percent commitment to energy generation receives 0 points;

(b) 10 to 29 percent commitment to energy generation receives 1 point;

(c) 30 to 49 percent commitment to energy generation receives 2 points;

(d) 50 to 69 percent commitment to energy generation receives 3 points;

(e) 70 to 89 percent commitment to energy generation receives 4 points;

(f) 90 percent or more commitment to energy generation receives 5 points. In order to receive more than 1 point for this energy generation section, an accurate energy analysis prepared by an engineer will need to be submitted with the pre-application. Energy analysis of preliminary building plans using industry-recognized simulation software must document the projected total energy consumption of the building, the portion of building consumption which will be satisfied through on-site generation, and the building's Home Energy Rating System (HERS) score.

4. *Property Management Credentials* (5 points). Projects may be awarded an additional 5 points if the designated property management company or individuals that will assume maintenance and operations responsibilities upon completion of construction work have a Credential for Green Property Management. Credentialing can be obtained from the National Apartment Association (NAA), National Affordable Housing Management Association, the Institute for Real Estate Management, U.S. Green Building Council's Leadership in Energy and Environmental Design for Operations and Maintenance (LEED OM), or another source with a certifiable credentialing program. Credentialing must be illustrated in the resume(s) of the property management team and included with the pre-application. (5 points).

B. *Leverage Assistance*

The presence and extent of leveraged assistance for the units that will serve USDA Rural Development income-eligible tenants at basic rents, as defined

in 7 CFR section 3560.11, comparable to those rents if USDA Rural Development provided full financing, computed as a percentage of the USDA Rural Development total development cost (TDC). Each of the environmental conservation programs mentioned under VI(A) may include grants and additional funding. This funding is also considered leveraged assistance and can receive points under this section. Also, funding sources for energy-efficiency in each State can be found at: <http://www.dsireusa.org/>. Loan proposals that include leveraged/secondary funds which have been requested, but have not yet been committed, will be processed as follows: The proposal will be scored based on the requested secondary funds, provided the applicant includes evidence of a filed application for the secondary funds; and the funding date of the requested secondary funds will permit processing of the loan request in the current funding cycle, or, if the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. Points will be awarded in accordance with the following table. Percentages will be rounded to the next higher whole number. (0 to 30 points).

Number of Points	Description % of Leveraging
30	150% or more
25	100–149%
20	50–99%
15	1–49%

C. *Colonia, Tribal land, or Rural Economic Area Partnership (REAP) Community*

The units to be developed are in a colonia, Tribal land, or Rural Economic Area Partnership (REAP) community, or in a place identified in the State Consolidated Plan or State Needs Assessment as a high need community for MFH. (20 points).

D. *Special Initiatives and MOU*

Pursuant to 7 CFR Section 3560.56 (c)(1)(iii), a National Office initiative will provide points to loan requests that meet the selection criteria as follows: In States where USDA Rural Development has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide state financial resources (State funds, State RA, HOME funds, Community Development Block Grant (CDBG) funds, or Low-Income Housing Tax Credits (LIHTC)) for USDA Rural Development proposals; or where the State provides preference or points to USDA Rural Development proposals

in awarding such State resources, 20 points will be provided to loan requests that include such State resources in an amount equal to at least 5 percent of the TDC. Native American Housing and Self Determination Act (NAHASDA) funds may be considered a State resource if the Tribal plan for NAHASDA funds contains provisions for partnering with USDA Rural Development for MFH. The applicant can contact its USDA Rural Development State Office to determine whether a particular State falls into this initiative. (20 Points).

E. Donated Land

The loan request includes donated land meeting the provisions of 7 CFR section 3560.56(c)(1)(iv). (5 points).

F. Presidentially Declared Disaster Area

Pursuant to 7 CFR 3560.56(c)(1)(iii), points will be awarded if the property will be constructed or rehabilitated in a Presidentially declared disaster area. The area must have been Presidentially declared a disaster area in 2011. For further information on Presidentially declared disaster areas, see <http://www.rurdev.usda.gov/rd/disasters/>. (10 Points).

VII. Set Asides

Loan requests will be accepted for the following set-asides:

A. Non-profit set-aside. An amount of \$2,000,000 has been set aside for non-profit applicants as defined in 7 CFR 3560.11. All loan proposals must be in designated places in accordance with 7 CFR section 3560.57. A State or jurisdiction may fund one proposal from this set-aside, which cannot exceed \$1 million. A State could receive additional funds from this set-aside if any funds remain after the Agency funds one proposal from each participating State. The National Office will inform the State Offices if additional funds are available. If additional set-aside funds remain, each State's second highest scoring proposal will be funded. If there are insufficient funds to fund one loan request from each participating State, selection will be determined nationally by point score on each State's highest ranking proposal. This method will also be used if additional funds are available to fund more than 1 loan proposal per State where there are insufficient funds to fund a second or more proposal for each State. If there are any funds remaining, they will be handled in accordance with 42 U.S.C. 1485(w)(3). Funds from this set-aside will be available only to nonprofit entities, which may include a partnership that has as its general partner a nonprofit entity or the

nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. To be eligible for this set-aside, the nonprofit entity must be an organization that:

1. Will own an interest in the project to be financed and will materially participate in the development and the operations of the project;
2. Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986;
3. Has among its purposes the planning, development, or management of low-income housing or community development projects; and
4. Is not affiliated with or controlled by a for-profit organization.

B. Underserved Counties and Colonias Set-aside. An amount of \$2,000,000 has been set aside for loan requests to develop units in the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949, as amended. A State or jurisdiction may fund one proposal from this set-aside, which cannot exceed \$1 million. A State could receive additional funds from this set-aside if any funds remain after the Agency funds one proposal from each participating State. The National Office will inform the State Offices if additional funds are available. If additional set-aside funds remain, each State's second highest scoring proposal will be funded. If there are insufficient funds to fund one loan request from each participating State, selection will be determined nationally by point score on each State's highest ranking proposal. This method will also be used if additional funds are available to fund more than 1 loan proposal per State where there are insufficient funds to fund a second or more proposal for each State. If there are any funds remaining, they will be handled in accordance with 42 U.S.C. 1485(w)(3).

C. REAP Zone Set-aside. An amount of \$2,000,000 has been set aside to develop units in a REAP zone. Loan requests that are eligible for this set-aside are also eligible for regular Section 515 funds. When requests for this set-aside exceed available funds, selection will be made in accordance with 7 CFR 3560.56(c) and ranking as described earlier in this NOFA. This set-aside is only available until June 30, 2011.

VIII. Rental Assistance (RA)

New construction RA will be available for FY 2011 in the amount of \$2,025,940. New construction RA may not be used in conjunction with a

transfer or subsequent loan for repairs or rehabilitation, preservation purposes or for inventory property sales.

IX. Appeal Process

Applicants that are rejected will be notified and given appeal rights under 7 CFR part 11. All adverse determinations regarding applicant's eligibility and the awarding of points as a part of the selection process are appealable. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

X. Equal Opportunity and Non-Discrimination Requirements

Borrowers and applicants will comply with the provisions of 7 CFR 3560.2. All housing must meet the accessibility requirements found at 7 CFR 3560.60(d). All applicants must submit or have on file a valid Form RD 400-1, "Equal Opportunity Agreement," and Form RD 400-4, "Assurance Agreement."

The U.S. Department of Agriculture prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Stop 9410, Washington, DC 20250-9410, or call toll free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-Relay) or (800) 845-6136 (Spanish Federal-Relay). USDA is an equal opportunity provider, employer, and lender.

The policies and regulations contained in 7 CFR part 1901, subpart E, apply to this program.

XI. USDA Rural Development MFH State Office Contacts

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601,
Sterling Centre, 4121 Carmichael
Road, Montgomery, AL 36106-3683,

- (334) 279-3618, TDD (334) 279-3495, Vann McCloud.
- Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761-7723, TDD (907) 761-8905, Cindy Jackson.
- Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003-1706, (602) 280-8768, TDD (602) 280-8706, Carol Torres.
- Arkansas State Office, 700 W. Capitol Ave., Room 3416, Little Rock, AR 72201-3225, (501) 301-3125, TDD (501) 301-3063, Greg Kemper.
- California State Office, 430 G Street, #4169, Davis, CA 95616-4169, (530) 792-5821, TDD (530) 792-5848, Debra Moretton.
- Colorado State Office, USDA Rural Development, Denver Federal Center, Building 56, Room 2300, P.O. Box 25426, Denver, CO 80225-0426, (720) 544-2923, TDD (800) 659-2656, Mary Summerfield.
- Connecticut, Served by Massachusetts State Office.
- Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857-3615, TDD (302) 857-3585, Debra Eason.
- Florida & Virgin Islands State Office, 4440 NW. 25th Place, Gainesville, FL 32606-6563, (352) 338-3465, TDD (352) 338-3499, Tresca Clemmons.
- Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601-2768, (706) 546-2164, TDD (706) 546-2034, Wayne Rogers.
- Hawaii State Office, (Services all Hawaii, American Samoa Guam, and Western Pacific), Room 311, Federal Building, 154 Waiianuenue Avenue, Hilo, HI 96720, (808) 933-8305, TDD (808) 933-8321, Nate Reidel.
- Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378-5630, TDD (208) 378-5644, Roni Atkins.
- Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821-2986, (217) 403-6222, TDD (217) 403-6240, Barry L. Ramsey.
- Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290-3100 (ext. 423), TDD (317) 290-3343, Paul Neumann.
- Iowa State Office, 210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284-4493, TDD (515) 284-4858, Heather Honkomp.
- Kansas State Office, 1303 SW. First American Place, Suite 100, Topeka, KS 66604-4040, (785) 271-2721, TDD (785) 271-2767, Mike Resnik.
- Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224-7325, TDD (859) 224-7422, Paul Higgins.
- Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473-7962, TDD (318) 473-7655, Yvonne R. Emerson.
- Maine State Office, 967 Illinois Ave., Suite 4, P.O. Box 405, Bangor, ME 04402-0405, (207) 990-9110, TDD (207) 942-7331, Bob Nadeau.
- Maryland, Served by Delaware State Office.
- Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253-4310, TDD (413) 253-4328, Richard Lavoie.
- Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324-5192, TDD (517) 337-6795, Julie Putnam.
- Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101-1853, (651) 602-7812, TDD (651) 602-7830, Tom Osborne.
- Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965-4325, TDD (601) 965-5850, Darnella Smith-Murray.
- Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876-0987, TDD (573) 876-9480, Rachelle Long.
- Montana State Office, 2229 Boot Hill Court, Bozeman, MT 59715, (406) 585-2515, TDD (406) 585-2562, Deborah Chorlton.
- Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437-5734, TDD (402) 437-5093, Linda Anders.
- Nevada State Office, 1390 South Curry Street, Carson City, NV 89703-5146, (775) 887-1222 (ext. 25), TDD (775) 885-0633, William Brewer.
- New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301-5004, (603) 223-6050, TDD (603) 229-0536, Robert McCarthy.
- New Jersey State Office, 5th Floor North Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787-7740, TDD (856) 787-7784, George Hyatt, Jr.
- New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761-4944, TDD (505) 761-4938, Susan Gauna.
- New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477-6421, TDD (315) 477-6421, Michael Bosak.
- North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873-2055, TDD (919) 873-2003, Beverly Casey.
- North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530-2049, TDD (701) 530-2113, Kathy Lake.
- Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215-2477, (614) 255-2409, TDD (614) 255-2554, Cathy Simmons.
- Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074-2654, (405) 742-1070, TDD (405) 742-1007, Tim Henderson.
- Oregon State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414-3353, TDD (503) 414-3387, Rod Hansen.
- Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110-2996, (717) 237-2281, TDD (717) 237-2261, Martha Hanson.
- Puerto Rico State Office, 654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey, PR 00918, (787) 766-5095 (ext. 249), TDD (787) 766-5332, Lourdes Colon.
- Rhode Island, Served by Massachusetts State Office.
- South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253-3432, TDD (803) 765-5697, Larry D. Floyd.
- South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352-1132, TDD (605) 352-1147, Roger Hazuka or Pam Reilly.
- Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203-1084, (615) 783-1375, TDD (615) 783-1397, Don Harris.
- Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742-9765, TDD (254) 742-9712, Scooter Brockett.
- Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147-0350, (801) 524-4325, TDD (801) 524-3309, Janice Kocher.
- Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828-6021, TDD (802) 223-6365, Heidi Setien.
- Virgin Islands, Served by Florida State Office.
- Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287-1596, TDD (804) 287-1753, CJ Michels.
- Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704-7706, TDD (360) 704-7760, Bill Kirkwood.
- Western Pacific Territories, Served by Hawaii State Office.
- West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505-7500, (304)

284–4872, TDD (304) 284–4836,
David Cain.

Wisconsin State Office, 4949 Kirschling
Court, Stevens Point, WI 54481, (715)
345–7676, TDD (715) 345–7614,
Cheryl Halverson.

Wyoming State Office, PO Box 11005,
Casper, WY 82602, (307) 233–6716,
TDD (307) 233–6733, Timothy Brooks.

Dated: July 6, 2011.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2011–17530 Filed 7–12–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

SUMMARY: On March 4, 2011, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India. This review covers 201 producers/exporters¹ of the subject merchandise to the United States. The period of review (POR) is February 1, 2009, through January 31, 2010.

Based on our analysis of the comments received, we have made no changes to the margin calculations. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled “Final Results of Review.”

DATES: *Effective Date:* July 13, 2011.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–3874 or (202) 482–0049, respectively.

¹ This figure does not include Vaibhav Sea Foods (Vaibhav), a company for which the Department is rescinding the administrative review. This figure also treats collapsed entities as one producer/exporter. For further discussion concerning the rescission of the review with respect to Vaibhav, see the “Partial Rescission” section of this notice below.

SUPPLEMENTARY INFORMATION:

Background

This review covers 201 producers/exporters. The respondents which the Department selected for individual examination are Apex Exports (Apex) and Falcon Marine Exports Limited (Falcon). The respondents which were not selected for individual examination are listed in the “Final Results of Review” section of this notice.

On March 4, 2011, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from India. *See Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Preliminary No Shipment Determination*, 76 FR 12025 (Mar. 4, 2011) (*Preliminary Results*).

On March 21, 2011, in response to a request from the Department, Triveni Fisheries Pvt. Ltd. (Triveni), a respondent not selected for individual examination, clarified its previous submission to indicate that it had no shipments, entries or sales of subject merchandise during the POR. For further discussion, see the “Determination of No Shipments” section of this notice.

In April 2011, the Department verified the cost data reported by Apex in India.

We invited parties to comment on the *Preliminary Results* of review. In May 2011, we received case and rebuttal briefs from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the American Shrimp Processors Association/the Louisiana Shrimp Association (collectively, “the processors”), and Apex and Falcon.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,² deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products

² “Tails” in this context means the tail fan, which includes the telson and the uropods.

which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of

dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Period of Review

The POR is February 1, 2009, through January 31, 2010.

Partial Rescission

In April 2010, after receiving timely requests, the Department initiated this administrative review with respect to a number of Indian exporters/producers, including Vaibhav. *See generally Certain Frozen Warmwater Shrimp From Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews*, 76 FR 18157 (Apr. 1, 2011) (*Initiation Notice*). We also included Vaibhav in the list of respondents not selected for individual review in our preliminary results. *See generally Preliminary Results*, 76 FR at 12032. However, in the 2005–2006 administrative review, we determined that this company no longer existed. *See Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055, 52057 (Sept. 12, 2007). Because there is no evidence on the record to contradict this prior determination, we find that our initiation with respect to Vaibhav was in error. As a result, we have determined to rescind this review with respect to Vaibhav.

Determination of No Shipments

As noted in the *Preliminary Results*, we received no-shipment claims from 20 companies named in the *Initiation Notice*, and we confirmed the claims from 19 of these companies with U.S. Customs and Border Protection (CBP). With respect to the remaining company, Triveni, it appeared from CBP entry documents that shrimp produced by this company entered the United States during the POR; however, as noted in the “Background” section, above, Triveni clarified its no-shipment statement after the date of the *Preliminary Results* to indicate that it had no knowledge of any shipments,

entries, or sales of subject merchandise to the United States during this period. *See Triveni’s letter to the Department dated March 21, 2011.* Based on Triveni’s most recent submission, we find that Triveni had no reportable transactions during the POR.

Therefore, because we find that the record indicates that these 20 companies did not export subject merchandise to the United States during the POR, we determine that they had no reviewable transactions during the POR. These companies are:

- (1) Abad Fisheries Pvt. Ltd.
- (2) Accelerated Freeze Drying Company Ltd.³
- (3) Baby Marine International
- (4) Baby Marine Sarass
- (5) Blue Water Foods & Exports P. Ltd.
- (6) BMR Exports
- (7) Castlerock Fisheries Pvt. Ltd.
- (8) Coastal Corporation Ltd.
- (9) Diamond Seafoods Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company
- (10) G A Randerian (P) Limited⁴
- (11) GKS Business Associates (P) Ltd.⁵
- (12) Kalyan Aqua & Marine Exports India Pvt. Ltd.
- (13) L. G. Sea Foods⁶
- (14) Lewis Natural Foods Ltd.
- (15) Libran Cold Storages Pvt. Ltd.
- (16) Shimpo Exports
- (17) SSF Limited
- (18) Sterling Foods
- (19) Triveni Fisheries Pvt. Ltd.
- (20) Unitriveni Overseas

As we stated in the *Preliminary Results*, our former practice concerning respondents submitting timely no-shipment certifications was to rescind the administrative review with respect to those companies if we were able to confirm the no-shipment certifications through a no-shipment inquiry with CBP. *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27393 (May 19, 1997); *see also Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results of Antidumping Duty Administrative Review*, 75 FR 76700, 76701 (Dec. 9, 2010). As a result, in such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, clarification of the “automatic assessment” regulation, we

explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

As noted in the *Preliminary Results*, because “as entered” liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the above listed companies and exported by other parties at the all-others rate. In addition, we continue to find that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to the 20 companies listed above and issue appropriate instructions to CBP based on the final results of this administrative review. *See the “Assessment Rates” section of this notice below.*

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether Apex and Falcon made third country sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b) of the Act. *See Preliminary Results*, 76 FR at 12029–12030. For these final results, we performed the cost test following the same methodology as in the *Preliminary Results*. *See id.* at 12030.

As explained in the *Preliminary Results*, based on the record of this administrative review we found 20 percent or more of Apex’s and Falcon’s sales of a given product during the reporting period were made at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in “substantial quantities” within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See id.*; and sections 773(b)(1)–(2) of the Act.

Following the publication of the *Preliminary Results*, no additional information was placed on the record concerning our determination of sales made below COP. Therefore, for purposes of these final results, we continue to find that, for certain products, Apex and Falcon made below-

³ This company was listed in the *Initiation Notice* as Accelerated Freeze-Drying Company Ltd.

⁴ This company was listed in the *Initiation Notice* as G A Randerian Ltd.

⁵ This company was listed in the *Initiation Notice* as G.K.S Business Associates Pvt. Ltd.

⁶ This company was listed in the *Initiation Notice* as L.G Seafoods.

cost sales not in the ordinary course of trade. Consequently, we are continuing to disregard these sales for each respondent and have used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act. Additionally, for those U.S. sales of subject merchandise for which there were no third country sales in the ordinary course of trade, we continued to compare export prices to constructed value in accordance with section 773(a)(4). *See generally Preliminary Results*, 76 FR at 12031.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (Decision Memo), which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 7046, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made no changes in the margin calculations.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period February 1, 2009, through January 31, 2010:

Manufacturer/Exporter	Percent margin
Apex Exports	2.31
Falcon Marine Exports Limited	1.36

Review-Specific Average Rate
Applicable to the Following
Companies:⁷

⁷ This rate is based on the average of the margins calculated for those companies selected for individual review, weighted by each company's publicly-ranked quantity of reported U.S. transactions. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (Sept. 1, 2010) (*Bearings from France*).

Manufacturer/Exporter	Percent margin	Manufacturer/Exporter	Percent margin
Abad Fisheries Pvt. Ltd	*	Frigerio Conserva Allana Limited	1.69
Accelerated Freeze Drying Company Ltd	*	Frontline Exports Pvt. Ltd	1.69
Adani Exports Ltd	1.69	G A Randerian (P) Limited	*
Adilakshmi Enterprises	1.69	Gadre Marine Exports	1.69
Allana Frozen Foods Pvt. Ltd ..	1.69	Galaxy Maritech Exports P. Ltd ..	1.69
Allansons Ltd	1.69	Gayatri Sea Foods and Feeds Private Ltd	1.69
AMI Enterprises	1.69	Gayatri Seafoods	1.69
Amulya Sea Foods	1.69	Geo Aquatic Products (P) Ltd ..	1.69
Anand Aqua Exports	1.69	Geo Seafoods	1.69
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/ Ananda Foods	1.69	GKS Business Associates (P) Ltd	*
Andaman Seafoods Pvt. Ltd	1.69	Grandtrust Overseas (P) Ltd	1.69
Angelique Intl	1.69	GVR Exports Pvt. Ltd	1.69
Anjaneya Seafoods	1.69	Haripriya Marine Export Pvt. Ltd	1.69
Anjani Marine Traders	1.69	Harmony Spices Pvt. Ltd	1.69
Asvini Exports	1.69	HIC ABF Special Foods Pvt. Ltd	1.69
Asvini Feeds Limited	1.69	Hindustan Lever, Ltd	1.69
Asvini Fisheries Private Limited	1.69	Hiravata Ice & Cold Storage	1.69
Avanti Feeds Limited	1.69	Hiravati Exports Pvt. Ltd	1.69
Ayshwarya Seafood Private Limited	1.69	Hiravati International Pvt. Ltd. (located at APM—Mafco Yard, Sector—18, Vashi, Navi, Mumbai—400 705, India)	1.69
Baby Marine Exports	1.69	Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	1.69
Baby Marine International	*	IFB Agro Industries Ltd	1.69
Baby Marine Sarass	*	Indian Aquatic Products	1.69
Bhatsons Aquatic Products	1.69	Indo Aquatics	1.69
Bhavani Seafoods	1.69	Innovative Foods Limited	1.69
Bhisti Exports	1.69	International Freezefish Exports	1.69
Bijaya Marine Products	1.69	Interseas	1.69
Blue Water Foods & Exports P. Ltd	*	ITC Limited, International Business	1.69
Bluefin Enterprises	1.69	ITC Ltd	1.69
Bluepark Seafoods Pvt. Ltd	1.69	Jagadeesh Marine Exports	1.69
Britto Exports	1.69	Jaya Satya Marine Exports	1.69
BMR Exports	*	Jaya Satya Marine Exports Pvt. Ltd	1.69
C P Aquaculture (India) Ltd	1.69	Jayalakshmi Sea Foods Private Limited	1.69
Calcutta Seafoods Pvt. Ltd	1.69	Jinny Marine Traders	1.69
Capithan Exporting Co	1.69	Jiya Packagings	1.69
Castlerock Fisheries Pvt. Ltd ...	*	KNR Marine Exports	1.69
Chemmeens (Regd)	1.69	K R M Marine Exports Ltd	1.69
Cherukattu Industries (Marine Div.)	1.69	K V Marine Exports	1.69
Choice Canning Company	1.69	Kalyan Aqua & Marine Exports India Pvt. Ltd	*
Choice Trading Corporation Private Limited	1.69	Kalyanee Marine	1.69
Coastal Corporation Ltd	*	Kay Kay Exports	1.69
Cochin Frozen Food Exports Pvt. Ltd	1.69	Kings Marine Products	1.69
Coreline Exports	1.69	Koluthara Exports Ltd	1.69
Corlim Marine Exports Pvt. Ltd	1.69	Konark Aquatics & Exports Pvt. Ltd	1.69
Damco India Private	1.69	L. G. Sea Foods	*
Devi Fisheries Limited	1.69	Landauer Ltd. C O Falcon Marine Exports Ltd	1.69
Devi Marine Food Exports Private Ltd./Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd./Liberty Oil Mills Ltd./Premier Marine Products/Universal Cold Storage Private Limited	1.69	Lewis Natural Foods Ltd	*
Dhanamjaya Impex P. Ltd	1.69	Libran Cold Storages Pvt. Ltd ..	*
Diamond Seafoods Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company	*	Lotus Sea Farms	1.69
Digha Seafood Exports	1.69	Lourde Exports	1.69
Esmario Export Enterprises	1.69	Magnum Estates Limited	1.69
Exporter Coreline Exports	1.69	Magnum Export	1.69
Five Star Marine Exports Private Limited	1.69	Magnum Sea Foods Limited	1.69
Forstar Frozen Foods Pvt. Ltd	1.69	Malabar Arabian Fisheries	1.69
		Malnad Exports Pvt. Ltd	1.69

Manufacturer/Exporter	Percent margin	Manufacturer/Exporter	Percent margin
Mangala Marine Exim India Private Ltd	1.69	Srikanth International Agri Exports & Imports	1.69
Mangala Sea Products	1.69	SSF Limited	*
Marine Exports	1.69	Star Agro Marine Exports	1.69
Meenaxi Fisheries Pvt. Ltd	1.69	Star Agro Marine Exports Private Limited	1.69
MSC Marine Exporters	1.69	Sterling Foods	*
MSRDR Exports	1.69	Sun Bio-Technology Ltd	1.69
MTR Foods	1.69	Supreme Exports	1.69
N.C. John & Sons (P) Ltd	1.69	Surya Marine Exports	1.69
Naga Hanuman Fish Packers ..	1.69	Suryamitra Exim (P) Ltd	1.69
Naik Frozen Foods	1.69	Suvarna Rekha Exports Private Limited	1.69
Naik Seafoods Ltd	1.69	Suvarna Rekha Marines P Ltd	1.69
Navayuga Exports Ltd	1.69	TBR Exports Pvt Ltd	1.69
Nekkanti Sea Foods Limited	1.69	Teekay Marine P. Ltd	1.69
NGR Aqua International	1.69	Tejaswani Enterprises	1.69
Nila Sea Foods Pvt. Ltd	1.69	The Waterbase Ltd	1.69
Nine Up Frozen Foods	1.69	Triveni Fisheries P Ltd	*
Overseas Marine Export	1.69	Unitriveni Overseas	*
Penver Products (P) Ltd	1.69	Usha Seafoods	1.69
Pijikay International Exports P Ltd	1.69	V.S Exim Pvt Ltd	1.69
Pisces Seafood International	1.69	Veejay Impex	1.69
Premier Seafoods Exim (P) Ltd ..	1.69	Veetejay Exim Pvt., Ltd	1.69
R V R Marine Products Private Limited	1.69	Victoria Marine & Agro Exports Ltd	1.69
Raa Systems Pvt. Ltd	1.69	Vijayalaxmi Seafoods	1.69
Raju Exports	1.69	Vinner Marine	1.69
Ram's Assorted Cold Storage Ltd	1.69	Vishal Exports	1.69
Raunaq Ice & Cold Storage	1.69	Wellcome Fisheries Limited	1.69
Raysons Aquatics Pvt. Ltd	1.69	West Coast Frozen Foods Private Limited	1.69
Razban Seafoods Ltd	1.69		
RBT Exports	1.69		
RDR Exports	1.69		
Riviera Exports Pvt. Ltd	1.69		
Rohi Marine Private Ltd	1.69		
Royal Cold Storage India P Ltd ..	1.69		
S & S Seafoods	1.69		
S. A. Exports	1.69		
S Chanchala Combines	1.69		
Safa Enterprises	1.69		
Sagar Foods	1.69		
Sagar Grandhi Exports Pvt. Ltd ..	1.69		
Sagarvihar Fisheries Pvt. Ltd ...	1.69		
SAI Marine Exports Pvt. Ltd	1.69		
SAI Sea Foods	1.69		
Sanchita Marine Products P Ltd ..	1.69		
Sandhya Aqua Exports	1.69		
Sandhya Aqua Exports Pvt. Ltd ..	1.69		
Sandhya Marines Limited	1.69		
Santhi Fisheries & Exports Ltd ..	1.69		
Satya Seafoods Private Limited ..	1.69		
Sawant Food Products	1.69		
Seagold Overseas Pvt. Ltd	1.69		
Selvam Exports Private Limited ..	1.69		
Sharat Industries Ltd	1.69		
Shimpo Exports	*		
Shippers Exports	1.69		
Shroff Processed Food & Cold Storage P Ltd	1.69		
Silver Seafood	1.69		
Sita Marine Exports	1.69		
SLS Exports Pvt. Ltd	1.69		
Sprint Exports Pvt. Ltd	1.69		
Sri Chandrantha Marine Exports ..	1.69		
Sri Sakthi Cold Storage	1.69		
Sri Sakthi Marine Products P Ltd ..	1.69		
Sri Satya Marine Exports	1.69		
Sri Venkata Padmavathi Marine Foods Pvt. Ltd	1.69		
Srikanth International	1.69		

* No shipments or sales subject to this review.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), because Apex and Falcon reported the entered value for all of their U.S. sales, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the entered value.

For the companies which were not selected for individual examination, we have calculated an assessment rate based on the average of the margins calculated for those companies selected for individual examination, weighted by each company's publicly-ranged quantity of reported U.S. transactions. In situations where we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information but where use of a simple average does not yield the best proxy of

the weighted-average margin relative to publicly available data, normally we will use the publicly available figures as a matter of practice. *See Bearings from France*, 75 FR at 53663.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Assessment Policy Notice*. This clarification applies to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to an intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of subject merchandise⁸ entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, as well as those companies listed in the "Determination of No

⁸ On April 26, 2011, the Department amended the scope of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam to include dusted shrimp within the scope of the orders. *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277, 23279 (April 26, 2011). Accordingly, for all entries made on or after April 26, 2011, we will instruct CBP to collect cash deposits on imports of the subject merchandise (including dusted shrimp) entered, or withdrawn from warehouse, for consumption at the rates noted above.

Shipments” section, above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147, 5148 (Feb. 1, 2005). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 5, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

General Issues

1. Offsetting of Negative Margins
2. Selection of Respondents Using a Sampling Methodology
3. Treatment of Assessed Antidumping Duties

4. Treatment of Income Earned on Antidumping Duty Deposits

[FR Doc. 2011–17486 Filed 7–12–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People’s Republic of China: Preliminary Results of the 2009–2010 Administrative Review of the Antidumping Duty Order and Intent To Rescind Administrative Review, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (“Department”) is currently conducting the 2009–2010 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (“TRBs”), from the People’s Republic of China (“PRC”), covering the period June 1, 2009, through May 31, 2010. We have preliminarily determined that sales have been made below normal value (“NV”) by certain companies subject to this review. Additionally, we are announcing that we intend to rescind the review with respect to entries of TRBs exported by Tainshui Hailin Import and Export Corporation (“Hailin I&E”) produced by any manufacturer other than Hailin Bearing Factory (“HB Factory”). We have preliminarily determined that Gansu Hailin Zhongke Science & Technology Co., Ltd. (“Hailin Zhongke”) is successor-in-interest to HB Factory. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on entries of subject merchandise during the period of review (“POR”) for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* July 13, 2011.

FOR FURTHER INFORMATION CONTACT:

Demitri Kalogeropoulos or Frances Veith, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2623 or (202) 482–4295, respectively.

Background

On June 15, 1987, the Department published in the **Federal Register** the antidumping duty order on TRBs from the PRC.¹ On June 1, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on TRBs from the PRC.² On June 30, 2010, we received the following requests for review: (1) The Timken Company, of Canton, Ohio (“Petitioner”) requested that the Department conduct an administrative review of all entries of TRBs during the POR exported by Peer Bearing Co., Ltd.—Changshan (“CPZ/SKF”) and by Hailin I&E (produced by any manufacturer other than HB Factory); (2) CPZ/SKF and its affiliate Peer Bearing Company (“Peer/SKF”) requested that the Department conduct an administrative review of all entries of TRBs during the POR exported by CPZ/SKF; and (3) Bosda International USA LLC (“Bosda”), a U.S. importer of subject merchandise, requested that the Department conduct an administrative review of all entries of TRBs during the POR exported by Zhejiang Sihe Machine Co., Ltd. (“Sihe”) and Xinchang Kaiyuan Automotive Bearing Co., Ltd. (“Kaiyuan”).

On July 28, 2010, the Department initiated the administrative review of the antidumping duty order on TRBs from the PRC for the period June 1, 2009, through May 31, 2010.³ On August 31, 2010, we amended the *Initiation Notice* with respect to TRBs exported by Hailin I&E.⁴ In the *Amended Initiation Notice*, we clarified that this administrative review covers TRBs exported by Hailin I&E that were produced by any manufacturer other than HB Factory, because the Department previously revoked the order with respect to TRBs exported by

¹ See *Notice of Antidumping Duty Order: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People’s Republic of China*, 52 FR 22667 (June 15, 1987).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 75 FR 30383 (June 1, 2010).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 75 FR 44224 (July 28, 2010) (“*Initiation Notice*”).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review*, 75 FR 53274, 53276 (August 31, 2010) (“*Amended Initiation Notice*”).

Hailin I&E that had been produced by HB Factory.⁵

On October 12, 2010, the Department exercised its authority to limit the number of respondents selected for individual examination pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (“the Act”). The Department selected the two largest exporters by volume as our mandatory respondents for this review, that is, CPZ/SKF and Hailin I&E.⁶ On October 14, 2010, the Department issued its antidumping duty questionnaire to CPZ/SKF and Hailin I&E. Between November 15, 2010, and June 13, 2011, CPZ/SKF and Hailin I&E responded to the Department’s original and supplemental questionnaires.

On February 24, 2011, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review by the full 120 days allowed under section 751(a)(3)(A) of the Act, to June 30, 2011.⁷ Between June 15, and June 21, 2011, Petitioner and Hailin I&E submitted pre-preliminary comments.⁸ Given the timing and complexity of Petitioner’s June 15, 2011 comments, the Department intends to address them fully in the context of the final results.

Period of Review

The POR is June 1, 2009 through May 31, 2010.

Scope of the Order

Imports covered by this order are shipments of tapered roller bearings and

parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15⁹ and 8708.99.80.80.¹⁰ Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Successor in Interest and Intent To Rescind, in Part, the Administrative Review

In the 14th administrative review of the antidumping duty order on TRBs from the PRC (POR: June 1, 2000 through May 31, 2001), the Department revoked the order on entries or sales of TRBs exported by Hailin I&E that were produced by HB Factory.¹¹ In response to questionnaires issued in the current review, Hailin I&E stated that HB Factory was no longer in existence, and during the POR covered by the current review, Hailin Zhongke was the producer of all of the TRBs that Hailin I&E exported to the United States. In addition, in its questionnaire responses, Hailin I&E stated that Hailin Zhongke is the successor-in-interest to HB Factory because: (1) In 2001 all of HB Factory’s manufacturing assets were transferred to Hailin Zhongke; (2) Hailin Zhongke is located at the same physical location as HB Factory; and (3) Hailin Zhongke has the same management, suppliers, and customer base as HB Factory.

In order to determine whether Hailin I&E’s exports of subject merchandise to the United States during the POR are subject to the review, the Department is conducting a successor-in-interest analysis to determine whether Hailin

Zhongke is the successor-in-interest to HB Factory. In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) Management, (2) production facilities, (3) supplier relationships, and (4) customer base.¹² Although no single or even several of these factors will necessarily provide a dispositive indication of succession, generally the Department will consider one company to be a successor to another company if its resulting operation is not materially dissimilar to that of its predecessor.¹³ Thus, if the “totality of circumstances” demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will treat the successor company the same as the predecessor for antidumping purposes.¹⁴

In Hailin I&E’s initial responses and subsequent responses to the Department’s supplemental questionnaires, we found evidence that indicated that since the 14th review, ownership of the HB Factory was restructured on multiple occasions. Specifically, in the 14th review, HB Factory was a state owned enterprise, owned 100 percent by “all the people.” Based on our review of Hailin I&E’s submissions, we found that, over an eight year period (2001–2008), the state owned assets in HB Factory and its successors were restructured to ultimately form Tianshui Hailin Bearing Co., Ltd. (“Hailin Bearing”) as the predominant owner of Hailin Zhongke.¹⁵

Because the antidumping duty order has been revoked in part for the exporter/producer combination of Hailin I&E/HB Factory, and Hailin I&E’s

¹² See, e.g., *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688 (June 18, 2010), and accompanying Issues and Decision Memorandum (“IDM”) at Comment 1.

¹³ See, e.g., *Fresh and Chilled Atlantic Salmon From Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999).

¹⁴ See *id.* at 9980; see also *Brass Sheet and Strip from Canada: Final Result of Administrative Review*, 57 FR 20461 (May 13, 1992) at Comment 1.

¹⁵ See Hailin I&E’s section A and supplemental section A submissions dated November 18, 2010, and May 20, 2011, respectively; see also the Department’s Memorandum entitled “2009–2010 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings from the People’s Republic of China: Preliminary Successor-In-Interest Determination,” dated concurrently with this notice (“Preliminary Successor-In-Interest Memorandum”).

⁵ See *id.* at n 5 (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, 67 FR 68990 (November 14, 2002)).

⁶ See the Department’s Memorandum entitled, “Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Respondent Selection,” dated October 12, 2010.

⁷ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Extension of Time Limit for the Preliminary Results of the 2009–2010 Administrative Review of the Antidumping Duty Order*, 76 FR 10336 (February 24, 2011).

⁸ See Petitioner’s June 15, 2011, letter titled “Administrative Review of the Antidumping Duty Order Covering Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China (6/1/2009–5/31/2010); The Timken Company’s Comments on the Department’s Preliminary Results for SKF;” and Petitioner’s June 21, 2011, letter titled “Administrative Review of the Antidumping Duty Order Covering Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China (6/1/2009–5/31/2010); The Timken Company’s Comments on the Department’s Preliminary Results for Tianshui Hailin;” and Hailin I&E’s June 16, 2011, letter titled “Tapered Roller Bearings from the PRC.”

⁹ Effective January 1, 2007, the HTSUS subheading 8708.99.8015 is renumbered as 8708.99.8115. See United States International Trade Commission (“USITC”) publication entitled, “Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988,” USITC Publication 3898 (December 2006) found at <http://www.usitc.gov>.

¹⁰ Effective January 1, 2007, the USHTS subheading 8708.99.8080 is renumbered as 8708.99.8180; see *id.*

¹¹ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, 67 FR 68990 (November 14, 2002).

submissions indicate that HB Factory was restructured to form Hailin Zhongke, the Department has reviewed the information on the record to determine whether Hailin Zhongke is the successor-in-interest to HB Factory. The Department preliminarily finds, based on the totality of the circumstances, that Hailin Zhongke is the successor-in-interest to HB Factory. The record in this review indicates the following: (1) That several senior managers operating Hailin I&E and HB Factory continue to perform the same functions for Hailin I&E and Hailin Zhongke's; (2) that while in the 14th review HB Factory was state-owned (*i.e.*, by "all the people"), SASAC later established Hailin Zhongke and transferred ownership of HB Factory's entire business complex, inclusive of physical plant and equipment, to Hailin Zhongke and that production continued virtually uninterrupted during and since the time of the transfer; (3) that Hailin Zhongke continued to purchase a significant portion of its steel bar and rod from the same supplier; (4) that Hailin Zhongke continued to supply essentially the same U.S. customer base it acquired from HB Factory's asset transfer, through Hailin I&E as HB Factory did during the 14th POR. Under these circumstances, the Department preliminarily finds that Hailin Zhongke is operating as the same business entity as HB Factory. As such, we preliminarily determine that Hailin Zhongke is the successor-in-interest to the producer HB Factory.¹⁶ However, for the final results, we intend to solicit additional information to further consider this issue, as well as information concerning whether Hailin Zhongke was the sole producer of the subject merchandise sold by Hailin I&E to the United States during the POR.

In its *Amended Initiation Notice*, the Department indicated that the administrative review covers entries of TRBs exported by Hailin I&E that were produced by any manufacturer other than HB Factory. Because we have preliminarily determined that all TRBs exported by Hailin I&E were produced by Hailin Zhongke, the successor-in-interest to HB Factory, we intend to rescind the review as to Hailin I&E on the basis of no shipments of merchandise subject to the review pursuant to 19 CFR 351.213(d)(3).

Non-Market Economy Country Status

Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a non-market economy

("NME") country shall remain in effect until revoked by the administering authority. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country.¹⁷ None of the parties to this review has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's factors of production ("FOPs"), valued in a surrogate market-economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.¹⁸

On November 3, 2010, the Department identified six countries as being at a level of economic development comparable to the PRC for the specified POR: India, the Philippines, Indonesia, Thailand, Ukraine, and Peru.¹⁹ On

¹⁷ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order*, 75 FR 41148 (July 15, 2010), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011).

¹⁸ See also the Department's memorandum entitled, "Preliminary Results of the 2009–2010 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Surrogate Value Memorandum," dated concurrently with this notice ("Surrogate Value Memorandum").

¹⁹ See Attachment I of the Department's letter dated December 7, 2010, in which we requested all interested parties to provide comments on surrogate-country selection and provide FOP values from the potential surrogate countries (*i.e.*, India, Indonesia, the Philippines, Thailand, Ukraine, and Peru) ("Surrogate Countries Letter"). Attachment I contains the Department's Memorandum from Carole Showers, Director, Office of Policy, to Erin Begnal, Program Manager, AD/CVD Operations, Office 8, entitled, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished ("TRBs") from the People's Republic of China ("PRC")," dated November 3, 2010 ("Surrogate Countries Memorandum"); see the Department's Policy Bulletin No. 04.1, regarding, "Non-Market Economy Surrogate Country Selection

December 7, 2010, the Department invited all interested parties to submit comments on the surrogate country selection.²⁰ On January 7, 2011, Petitioner and CPZ/SKF submitted comments regarding the Department's selection of a surrogate country for the preliminary results.

With respect to the Department's selection of surrogate country, both Petitioner and CPZ/SKF argue that India is the most appropriate surrogate country from which to derive surrogate factor values for the PRC because India is economically comparable to the PRC, is a significant producer of TRBs, and there is reliable information from India on the record that can be used to value respondents' FOPs.²¹ Both parties also state that the Department should rely on India to derive surrogate factor values for the PRC, as it did in the 2006–2007, 2007–2008, and 2008–2009 administrative reviews. Hailin I&E did not submit comments regarding surrogate country selection.

The Department uses per capita Gross National Income ("GNI") as the primary basis for determining economic comparability.²² Once the countries that are economically comparable to the PRC have been identified, the Department selects an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether data for valuing FOPs are both available and reliable. Therefore, the Department is preliminarily selecting India as the surrogate country on the basis that: (1) It is at a similar level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs. Accordingly, we have calculated NV using Indian prices when available and appropriate to value each respondent's FOPs.²³ In certain instances where Indian surrogate values ("SV") were not deemed to be the best available data, we have relied on Thai SVs in the alternative. Thailand is also at a similar level of economic development to the PRC and is a significant producer of comparable merchandise. In accordance

Process," (March 1, 2004) ("Policy Bulletin 04.1"), available on the Department's Web site at <http://ia.ita.doc.gov/policy/bull04-1.html>.

²⁰ See Surrogate Countries Letter.

²¹ See Petitioner's and CPZ/SKF's submissions dated January 7, 2011, regarding the appropriate surrogate country to be used for purposes of valuing FOPs in this administrative review.

²² See Policy Bulletin 04.1.

²³ See Surrogate Value Memorandum; see also "Factor Valuations" section, below.

¹⁶ See Preliminary Successor-In-Interest Memorandum.

with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review, interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of these preliminary results.²⁴

Separate Rates

In antidumping proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that the export activities of all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

CPZ/SKF submitted information indicating that CPZ/SKF is a wholly foreign-owned limited liability company. Therefore, for the purposes of these preliminary results, the Department finds that it is not necessary to perform a separate-rate analysis for CPZ/SKF. Sihe and Kaiyuan each have

submitted information indicating that they are limited liability PRC companies that have no foreign ownership. Therefore, the Department must analyze whether Sihe and Kaiyuan have demonstrated the absence of both *de jure* and *de facto* government control over export activities, and are therefore entitled to a separate rate.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.²⁵

The evidence provided by Sihe and Kaiyuan supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.²⁶

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.²⁷

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the

Department from assigning separate rates. For Sihe and Kaiyuan, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) Each respondent sets its own export prices independent of the government and without the approval of a government authority; (2) each respondent retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each respondent has the authority to negotiate and sign contracts and other agreements; and (4) each respondent has autonomy from the government regarding the selection of management.²⁸

The evidence placed on the record of this review by each respondent demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are preliminarily granting Sihe and Kaiyuan a separate rate.

Margin for Separate Rate Companies

The Act and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. For the exporters subject to a review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available.

As discussed above, the Department received a timely and complete separate rate certification from Sihe and Kaiyuan, exporters of TRBs from the PRC during the POR and neither Sihe nor Kaiyuan were selected as mandatory respondents in this review. These companies have demonstrated their eligibility for a separate rate, as discussed above. Consistent with the Department's practice, as the separate

²⁴ In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying IDM at Comment 2.

²⁵ See *Sparklers*, 56 FR at 20589.

²⁶ See Sihe's Separate Rate Application ("SRA"), dated October 21, 2010, and Kaiyuan's SRA, dated October 21, 2010.

²⁷ See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

²⁸ See Sihe's SRA, dated October 21, 2010, and Kaiyuan's SRA dated October 21, 2010.

rate, we have established a margin for Sihe and Kaiyuan based on the rate we calculated for the individually examined respondent, CPZ/SKF.

Fair Value Comparisons

To determine whether sales of TRBs to the United States by CPZ/SKF were made at less than fair value, we compared constructed export price ("CEP") to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice, below, pursuant to section 771(35) of the Act.

U.S. Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for CPZ/SKF's sales because the exporter first sold subject merchandise to its affiliated company in the United States, Peer/SKF, which in turn sold subject merchandise to unaffiliated U.S. customers. We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight and foreign brokerage and handling from the plant to the port of exportation, international freight, U.S. brokerage and handling, marine insurance, other U.S. transportation, U.S. customs duty, U.S. warehousing expenses, where applicable, U.S. inland freight from port to the warehouse, and U.S. inland freight from the warehouse to the customer.

We valued foreign brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods from India where foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India as reported in "Doing Business 2010: India" published by the World Bank.²⁹ Where foreign inland freight or international freight were provided by PRC service providers or paid for in

renminbi, we based those charges on surrogate rates from India. See "Factor Valuations" section below for further discussion of these surrogate values.

In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.³⁰

Normal Value

We compared NV to individual CEP transactions in accordance with section 777A(d)(2) of the Act, as appropriate. Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by CPZ/SKF for materials, energy, labor and packing.

In the instant review, CPZ/SKF reported sales that were further manufactured or assembled in a third country. Consistent with *TRBs 2007–2008* and *TRBs 2008–2009*,³¹ the Department has determined that the finishing operations in the third country

do not constitute substantial transformation and, hence, do not confer a new country of origin for antidumping purposes. As such, we have determined NV for such sales based on the country of origin (*i.e.*, the PRC), pursuant to section 773(a)(3)(A) of the Act, because CPZ/SKF knew at the time of the sale of merchandise to the third country that it was destined for export to the United States. The Department also included the further manufacturing and assembly costs incurred in the third country in the NV calculation, as well as the expense of transporting the merchandise from the factory in the PRC to the further manufacturing plant in the third country.³²

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by CPZ/SKF for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department normally will value the factor using the actual price paid for the input if the quantities were meaningful and where the prices have not been distorted by dumping or subsidies.³³ To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.³⁴ We considered the quality, specificity, and contemporaneity of the data.³⁵ As

²⁹ See the Department's memorandum entitled, "2009–2010 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Peer Bearing Company—Changshan," dated concurrently with this notice ("CPZ/SKF Program Analysis Memorandum").

³⁰ See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2007–2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) ("TRBs 2007–2008"), and accompanying IDM at Comment 1; and *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) ("TRBs 2008–2009"), and accompanying IDM at Comment 6.

³¹ See CPZ/SKF's Program Analysis Memorandum.

³² See *Shakeproof Assembly Components Div of Ill Tool Works v. United States*, 268 F. 3d 1376, 1382–83 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

³³ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

³⁴ See, e.g., *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December

Continued

²⁹ See Surrogate Value Memorandum.

appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).

On December 7, 2010, the Department invited all interested parties to submit publicly available information to value FOPs for consideration in the Department's preliminary results of review.³⁶ On January 14, 2011, Petitioner and CPZ/SKF each submitted publicly available information to value FOPs for the preliminary results and CPZ/SKF submitted rebuttal comments on January 24, 2011. A detailed description of all surrogate values used for CPZ/SKF can be found in the Surrogate Value Memorandum.

For the preliminary results, in accordance with the Department's practice, except where noted below, we used data from the Indian import statistics in the Global Trade Atlas ("GTA"), published by Global Trade Information Services, Inc. ("GTIS") and other publicly available Indian sources to calculate SVs for CPZ/SKF's FOPs (i.e., direct materials, energy, and packing materials) and certain movement expenses. The GTA reports import statistics, such as from India, in the original reporting currency and thus this data corresponds to the original currency value reported by each country. The record shows that data in the Indian import statistics, as well as those from the other Indian sources, are contemporaneous with the POR, product-specific, and tax-exclusive.³⁷ In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the International Monetary Fund's *International Financial Statistics*.³⁸

4, 2002), and accompanying IDM at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying IDM at Comment 5.

³⁶ See Surrogate Countries Letter.

³⁷ See Surrogate Value Memorandum.

³⁸ See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9600 (March 5, 2009),

As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its longstanding practice of disregarding SVs if it has a reason to believe or suspect the source data may reflect subsidized prices.³⁹ In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.⁴⁰ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries.⁴¹ Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁴²

CPZ/SKF claimed that certain of its reported raw material inputs were sourced from an ME country and paid for in ME currencies. When a respondent sources inputs from an ME supplier in meaningful quantities, we use the actual price paid by respondent for those inputs, except when prices may have been distorted by dumping or

unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009).

³⁹ Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("OTCA 1988") at 590, reprinted in 1988 U.S.C.A.N. 1547, 1623–24.

⁴⁰ See, e.g., *Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; *Final Results of Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

⁴¹ See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order*, 76 FR 34048, unchanged in *TRBs 2008–2009*.

⁴² See *id.*

subsidies.⁴³ Where we found ME purchases to be of significant quantities (i.e., 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,⁴⁴ we used the actual purchase prices of these inputs to value the full input.

Accordingly, we valued certain of CPZ/SKF's inputs using the ME currency prices paid where the total volume of the input purchased from all ME sources during the POR exceeds or is equal to 33 percent of the total volume of the input purchased from all sources during the period. Where the quantity of the reported input purchased from ME suppliers was below 33 percent of the total volume of the input purchased from all sources during the POR, and were otherwise valid, we weight-averaged the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.⁴⁵ Where appropriate, we added freight to the ME prices of inputs. For a detailed description of the actual values used for the ME inputs reported, see CPZ/SKF Program Analysis Memorandum.

Among the FOPs for which the Department calculated SVs using Indian import statistics are steel tube, cage steel, steel scrap, anti-rust oil, and all packing materials.

With respect to the valuation of wire rod, Petitioner submitted data from two HTS categories, Indian HTS 7228.50.90—*Other steel bars, not cold formed, other*, and Thai HTS 7228.50.10—*Other steel bars, not cold formed, of circular cross-section*. CPZ/SKF recommended that Thai import data be used to value its wire rod, citing the preceding antidumping review of TRBs in which the Department chose Thai data because the Indian data were determined to be aberrational and less specific to the input.⁴⁶ CPZ/SKF argues that similar circumstances are present in this segment of the proceeding and so the Department should again reject the Indian import data in favor of the Thai import data.

For the preliminary results, we have determined to use contemporaneous

⁴³ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

⁴⁴ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006) ("Antidumping Methodologies: Market Economy Inputs").

⁴⁵ See *Antidumping Methodologies: Market Economy Inputs*, 71 FR at 61718.

⁴⁶ TRBs 2008–2009 and IDM at Comment 15.

Thai import data from HTS category 7228.50.10 to calculate an SV for wire rod because these data are more specific to the input than the Indian import data. Specifically, the Indian HTS category contains rod of a type identified as “other,” whereas the Thai HTS category identifies a particular type of rod that is of “circular cross-section,” corresponding to the shape of CPZ/SKF’s actual wire rod input.⁴⁷

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities.⁴⁸

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled “Electricity Tariff & Duty and Average Rates of Electricity Supply in India,” dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India.⁴⁹ Because the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. In other words, the Department did not inflate this value to the POR because the utility rates represent current rates, as indicated by the effective date listed for each of the rates provided.⁵⁰

Because CPZ/SKF had shipments of subject merchandise to a third country for further manufacturing during the POR, we added the additional international freight cost to NV, and applied the SV for international freight from the PRC to the third country. The Department valued ocean freight using publicly available data collected from Maersk Line.⁵¹

Section 733(c) of the Act provides that the Department will value the FOPs in NME cases using the best available information regarding the value of such factors in a ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOPs, the Department utilizes, to the extent

possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a comparable level of economic development and (2) significant producers of comparable merchandise.⁵²

Previously, the Department used regression-based wages that captured the worldwide relationship between *per capita* GNI and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent’s cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (“CAFC”), in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) (“*Dorbest*”), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC’s ruling in *Dorbest*, the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology, and the data sources.⁵³

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.⁵⁴ In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (“Yearbook”).

In these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies*. To value the respondent’s labor input, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under ISIC–Revision 3 (“29—Manufacture of machinery and equipment”) to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. This two-digit category contains the sub-category for class 2913—“manufacture of bearings,

gears, gearing and driving elements.” Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Sub-Classification 29 of the ISIC–Revision 3 standard, in accordance with Section 773(c)(4) of the Act. For these preliminary results, the calculated industry-specific wage rate is \$1.66. Because this wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by CPZ/SKF.⁵⁵ A more detailed description of the wage rate calculation methodology is provided in the preliminary surrogate value memorandum.⁵⁶

As stated above, the Department used India’s ILO data reported under Chapter 6A of Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Since the financial statements used to calculate the surrogate financial ratios include itemized detail of indirect labor costs, the Department made adjustments to the surrogate financial ratios.⁵⁷

Pursuant to 19 CFR 351.408(c)(4), the Department valued factory overhead, selling, general and administrative expenses and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. The Department’s practice is to disregard financial information containing evidence that the company received subsidies that the Department has previously found to be countervailable, and where there are other reliable data on the record for purposes of calculating the surrogate financial ratios.⁵⁸ For these preliminary results, we used the average of the ratios derived from the financial statements of three Indian producers of TRBs: ABC Bearings Limited (for the year ending on March 31, 2009), FAG Bearings India Limited (for the year ending on December 31, 2009), and NRB Bearing (for the year ending on March 31, 2010). We did not use financial statements from three other Indian producers, SKF India, Timken India, and Austin Bearing, because they each contained evidence of receipt of a subsidy which the Department has found to be

⁴⁷ See Surrogate Value Memorandum.

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ See, e.g., *Wire Decking from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 32905 (June 10, 2010), and accompanying IDM at Comment 3.

⁵¹ See Surrogate Value Memorandum.

⁵² See section 773(c)(4) of the Act.

⁵³ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, Request for Comment, 76 FR 9544 (Feb. 18, 2011).

⁵⁴ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

⁵⁵ See Surrogate Value Memorandum.

⁵⁶ See *id.*

⁵⁷ See Surrogate Value Memorandum.

⁵⁸ See *First Administrative Review of Steel Wire Garment Hangers From the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994 (May 13, 2011) and IDM at Comment 2.

countervailable.⁵⁹ Specifically, these three Indian producers received benefits under the Duty Entitlement Pass Book, a program that the Department has previously determined to be countervailable.⁶⁰

CPZ/SKF reported that steel scrap was recovered as a by-product of the production of subject merchandise and successfully demonstrated that the scrap has commercial value. Therefore, we have granted a by-product offset for the quantities of the reported by-product, valued using Indian GTA data.⁶¹

Currency Conversion

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists for the period June 1, 2009, through May 31, 2010:

TRBS FROM THE PRC

Exporters	Weighted-average percent margin
Changshan Peer Bearing Co., Ltd.	5.61
Zhejiang Sihe Machine Co., Ltd.	5.61
Xinchang Kaiyuan Automotive Bearing Co., Ltd.	5.61

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.⁶² Rebuttals to written comments may be filed no later than five days after the written comments are filed.⁶³ Further, parties submitting written comments and rebuttal comments are requested to provide the Department with an

additional copy of those comments on diskette.

Any interested party may request a hearing within 30 days of publication of this notice.⁶⁴ Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.⁶⁵

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated exporter/importer (or customer) -specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer) -specific assessment rate is *de minimis* (i.e., less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise

exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

With regard to Hailin I&E, if we continue to find in our final results of review that Hailin Zhongke (1) Is the successor-in-interest to HB Factory, and (2) was Hailin I&E's sole supplier of TRBs sold to the United States during the POR, we will instruct CBP to liquidate Hailin I&E's entries of subject merchandise produced by Hailin Zhongke without regard to antidumping duties.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For CPZ/SKF, Sihe, and Kaiyuan, the cash deposit rate will be their respective rates established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 92.84 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in

⁵⁹ See Surrogate Value Memorandum.

⁶⁰ See, e.g., *Certain Iron-Metal Castings from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 64 FR 61592 (Nov. 12, 1999), unchanged in *Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 65 FR 31515 (May 18, 2000).

⁶¹ See Surrogate Value Memorandum.

⁶² See 19 CFR 351.309(c).

⁶³ See 19 CFR 351.309(d).

⁶⁴ See 19 CFR 351.310(c).

⁶⁵ See 19 CFR 351.310(d).

accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

Dated: June 30, 2011.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import
Administration.

[FR Doc. 2011-17480 Filed 7-12-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-890]

Wooden Bedroom Furniture From the People's Republic of China: Extension of the Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 7, 2011.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Rebecca Pandolph, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2769 and (202) 482-3627, respectively.

SUPPLEMENTARY INFORMATION: On March 4, 2010, the Department of Commerce ("Department") published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China covering the period January 1, 2009, through December 31, 2009. *See Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China*, 75 FR 9869 (March 4, 2010). On February 10, 2011, the Department published in the **Federal Register** its preliminary results of the administrative review. *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part*, 76 FR 7534 (February 10, 2011). On June 10, 2011, the Department extended the time period for completing the final results of the instant administrative review. *See Wooden Bedroom Furniture from the People's Republic of China: Extension of the Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 76 FR 34043 (June 10, 2011). The final results of the administrative

review are currently due no later than July 11, 2011.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 120 day period to 180 days after publication of the preliminary results (or 300 days if the Department has not extended the time limit for the preliminary results).

Extension of Time Limit for Final Results

The Department has determined that it is not practicable to complete the review within the 120-day time period because it requires additional time to consider the comments it received on May 25, 2011 concerning Zhangjiagang Zheng Yan Decoration Co., Ltd. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completing the final results of the instant administrative review until August 9, 2011.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i) of the Act.

Dated: July 7, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping
and Countervailing Duty Operations.

[FR Doc. 2011-17624 Filed 7-12-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-851]

Certain Preserved Mushrooms From the People's Republic of China; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 13, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Fred Baker, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4947 or (202) 482-2924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2011, the Department of Commerce (Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China, covering the period February 1, 2009, to January 31, 2010. *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Rescission in Part, and Intent To Rescind in Part*, 76 FR 12704 (March 8, 2011) (*Preliminary Results*). The current deadline for the final results of this review is July 6, 2011.

Extension of Time Limits for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department complete the final results of an administrative review within 120 days after the date on which notice of the preliminary results was published in the **Federal Register**. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days after the publication date of the preliminary results.

The Department finds that it is not practicable to complete the final results of this review within the original time frame because the Department continues to require additional time to analyze issues raised in recent case and rebuttal briefs. Thus, the Department finds it is not practicable to complete this review within the original time limit (*i.e.*, July 6, 2011). Accordingly, the Department is extending the time limit for completion of the final results of this administrative review by 60 days (*i.e.*, until September 4, 2011), in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). However, because September 4, 2011, falls on a weekend, and the following day is a federal holiday, the time limit for completion of our final results will be September 6, 2011.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: July 6, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011-17634 Filed 7-12-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648-AW83]

Atlantic Highly Migratory Species; Environmental Assessment for Amendment 4 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent.

SUMMARY: NMFS announces its intent to prepare an Environmental Assessment (EA) for Amendment 4 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) instead an Environmental Impact Statement (EIS) as previously announced through publication of a Notice of Intent published on May 27, 2008. NMFS intends to prepare the EA under the National Environmental Policy Act (NEPA) to assess the potential effects on the human environment of proposed alternatives and actions under Amendment 4 to the 2006 Consolidated HMS FMP. The EA will analyze potential environmental impacts of various alternatives to permitting and reporting requirements for commercial HMS fisheries in U.S. waters of the Caribbean as well as examine management alternatives to improve catch reporting and data collection in Puerto Rico and the U.S. Virgin Islands consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Atlantic Tunas Convention Act (ATCA), and other relevant Federal laws.

FOR FURTHER INFORMATION CONTACT: Greg Fairclough by phone: (727) 824-5399, or by fax: (727) 824-5398.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act, and the Atlantic tuna, swordfish, and billfish fisheries are managed under the Magnuson-Stevens Act and ATCA. The Consolidated HMS FMP is implemented by regulations at 50 CFR Part 635. Copies of the

Consolidated HMS FMP are available from NMFS on request.

NMFS announces its intent to prepare an Environmental Assessment (EA) for Amendment 4 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) instead an Environmental Impact Statement (EIS) as previously announced through publication of a Notice of Intent published on May 27, 2008 (73 FR 30381). NMFS intends to prepare the EA under the National Environmental Policy Act (NEPA) to assess the potential effects on the human environment of proposed alternatives and actions under Amendment 4 to the 2006 Consolidated HMS FMP. The EA will analyze potential environmental impacts of various alternatives to permitting and reporting requirements for commercial HMS fisheries in U.S. waters of the Caribbean as well as examine management alternatives to improve catch reporting and data collection in Puerto Rico and the U.S. Virgin Islands consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Atlantic Tunas Convention Act (ATCA), and other relevant Federal laws.

After consideration of substantive comments received through formal scoping and other means, NMFS has determined that an EA would provide an appropriate level of NEPA review for Amendment 4 to the Consolidated HMS FMP and preparation of an EIS is not necessary. NMFS anticipates that the proposed action would have a low level of potential adverse environmental impacts due to the limited geographic area of the Caribbean HMS fishery, small size of the vessels involved, the relatively low number of known participants, and the use of traditional handgears. Additionally, the potential adverse impacts to protected species would be expected to be minimal.

Dated: July 7, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011-17662 Filed 7-12-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA561

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) Research Steering Committee (Committee) will hold a webinar.

DATES: The meeting will be held on Tuesday, August 2, 2011, at 3 p.m.

ADDRESSES:

Meeting address: The webinar will be held at the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465-0492; fax: (978) 465-3116.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to respond to NMFS' request for additional information regarding adoption of the new eliminator trawl. The RSC will answer the following questions in the form of a recommendation to be reviewed by the Council's Executive Committee at its August 9th meeting:

1. Is the Council's intent that the gear be available to both sector and non-sector vessels for use in the Haddock SAP and as a specified gear for the purpose of discard estimation? 2. Does the committee feel there is sufficient information to warrant treating the new eliminator trawl the same as the Ruhl trawl for the purpose of discard estimation, or does it recommend creating a new gear code due to potential for catch performance differences? 3. How does the committee evaluate the gear with respect to the Haddock SAP and Regular B-day program gear performance standards in the regulations?

The research report on the gear in question is available at <http://www.nefmc.org> under Research Steering Committee meeting materials for the April 14th meeting. The public may obtain information about accessing the webinar by visiting the New England Council's Web site at <http://www.nefmc.org>.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under

section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978-465-0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 8, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011-17569 Filed 7-12-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. #110614333-1333-01]

Technical Inputs and Assessment Capacity on Topics Related to 2013 U.S. National Climate Assessment

AGENCY: Office of Oceanic and Atmospheric Research (OAR) National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

Request for Information: Technical Inputs and Assessment Capacity Related to Regional, Sectoral, and Cross-Cutting Assessments for the 2013 U.S. National Climate Assessment (NCA) Report and the Ongoing NCA Process.

ACTION: Request for information.

SUMMARY: This request for information (RFI) seeks comments and expressions of interest from the public in providing technical inputs and/or offering assessment capacity on topics related to National Climate Assessment (NCA) regional, sectoral, and cross-cutting topics proposed for the 2013 NCA report and the ongoing NCA process. More information on the NCA process, including the strategic plan, proposed report outline, and information about the National Climate Assessment Development and Advisory Committee (NCADAC), can be found at <http://assessment.globalchange.gov>.

Teams of experts and/or individuals in climate-related fields ("teams") interested in providing inputs to the NCA are encouraged to review the "Potential Technical Inputs and Assessment Capacities" and "Suggested Best Practices" available online at

<http://www.globalchange.gov/what-we-do/assessment/backgroundprocess/notices> and to prepare a short expression of interest (EOI) describing their anticipated inputs. All EOIs submitted in response to this notice must include a primary point of contact and contact information (phone number, mailing address, e-mail address, Web site if applicable, institutional affiliation(s) if applicable). In addition, it is recommended that EOIs include the specific NCA topic(s) of interest, a short description of the input(s) the team intends to provide, and background information about the team and sponsoring organization.

A full draft of the NCA report is anticipated by mid-2012, so that scientific and subject-matter experts and the broader public will have sufficient time to review the draft and provide comments to the NCADAC on its content. A full year is planned to review and revise the report, with a planned release in mid-2013. Technical inputs should be provided well in advance of these deadlines, with target dates for activities and inputs as follows:

- Now–Summer 2011: Expressions of interest; Initial work plans.
- Now–Fall 2011: Teams conduct activities (workshops, literature reviews, modeling runs, etc.).
- December 2011–February 1, 2012: Initial inputs, including draft reports.
- March 1, 2012: Final inputs, including full reports.
- After March 1, 2012: Continued development and delivery of ongoing assessment capacity.

While the NCADAC welcomes inputs to the NCA, it is not able to make commitments about how these inputs will be used in the 2013 NCA report. In addition, neither the US Global Change Research Program (USGCRP) nor the NCADAC are responsible for funding the work of teams that choose to provide inputs. This notice pertains only to the underlying data, reports, other technical inputs, and assessment capacities offered to the NCA, and not to the writing of the 2013 NCA report, which is under the purview of the NCADAC. Although the emphasis in this RFI is on contributions made in time for the 2013 NCA report, contributions that are not received in time for the report will be retained and may be used in the ongoing, sustained assessment process. Some assessment contributions may be specifically targeted to such an ongoing process.

All submissions will be provided to the NCADAC. Ultimately, technical inputs that are determined to meet information quality and scientific rigor

standards (expected to be developed by the NCADAC in the coming months) may be posted in the publicly-accessible NCA online database. In the interim, teams are encouraged to review Federal information quality requirements (available from <http://www.whitehouse.gov/sites/default/files/omb/fedreg/reproducible2.pdf>) for general guidance.

Response Instructions: General comments and expressions of interest should be submitted via e-mail to Emily Therese Cloyd, NCA Public Participation and Engagement Coordinator, at ecloyd@usgcrp.gov. The suggested format for the expressions of interest is described below.

Comments and expressions of interest may be submitted at any time and will be reviewed on a rolling basis.

Responses to this notice cannot be accepted by the government to form a binding contract or issue a grant. Information obtained as a result of this request may be used by the government for program planning on a non-attribution basis. Do not include any information that might be considered proprietary or confidential.

FOR FURTHER INFORMATION CONTACT: Any questions about the content of this request should be sent to Emily Therese Cloyd, NCA Public Participation and Engagement Coordinator, US Global Change Research Program Office, 1717 Pennsylvania Ave., NW., Suite 250, Washington, DC 20006, Telephone (202) 223-6262, Fax (202) 223-3065, e-mail ecloyd@usgcrp.gov. For more information about the NCA process, including the strategic plan, proposed report outline, and information about the NCADAC, please visit <http://assessment.globalchange.gov>.

SUPPLEMENTARY INFORMATION:

Background. The National Climate Assessment (NCA) is being conducted under the auspices of the U.S. Global Change Research Program (USGCRP), pursuant to the Global Change Research Act of 1990, Section 106, which requires that: "On a periodic basis (not less frequently than every 4 years), the Council [the National Science and Technology Council], through the Committee [the Global Change Research Committee], shall prepare and submit to the President and Congress an assessment which—

1. Integrates, evaluates, and interprets the findings of the [USGCR] Program and discusses the scientific uncertainties associated with such findings;

2. Analyzes the effects of global change and the natural environment, agriculture, energy production and use,

land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and

3. Analyzes current trends in global change, both human-induced and natural, and projects major trends for the subsequent 25 to 100 years.”

Previous NCA reports have been built largely around Federal agency-led studies and technical reports and have primarily drawn on the peer-reviewed literature, but have also in special cases included unique data collections or technical inputs from various outside sources. These inputs, including the agency-led Synthesis and Assessment Products (2006–2009), have informed the Federal advisory committees that produced integrated, comprehensive NCA reports in 2000 and 2009. With this notice, the National Assessment Development and Advisory Committee (NCADAC) is specifically seeking contributions of technical inputs and/or offers of assessment capacity from non-Federal sources.

Although the 2013 NCA report and subsequent reports will continue to depend heavily on Federal agency leadership and corresponding technical reports, the NCADAC recognizes and seeks to leverage the important and growing distributed science capabilities and core competencies across the U.S. Indeed, it is a goal of the NCA process to increase assessment capacity both within and outside of the Federal government. Expertise within state and local governments, non-governmental organizations, impacted communities, professional societies, and private industry represent currently untapped assets and diverse scientific and technical perspectives, especially as they relate to the value of climate and global change information for decision making. Managing and reconciling such diverse viewpoints will not be easy, but ultimately, if done correctly and well, will result in future NCA reports that are better informed and more useful for decision makers both inside and outside of Federal government. The inputs requested here will become a resource to be considered by the NCADAC and should not be confused with the chapters of the NCA report itself. All inputs received, including both technical inputs and offers of assessment capacity, will be made available to the NCADAC. The USGCRP cannot arrange for or provide funding to support the work of teams that express interest in providing inputs to the NCA.

A full draft of the NCA report is anticipated by mid-2012, so that scientific and subject-matter experts and the broader public will have sufficient

time to review the draft and provide comments to the NCADAC on its content. A full year is planned to review and revise the report, with a planned release in mid-2013. Technical inputs should be provided well in advance of these deadlines, with target dates for activities and inputs as follows:

- Now–Summer 2011: Expressions of interest; Initial work plans.
- Now–Fall 2011: Teams conduct activities (workshops, literature reviews, modeling runs, etc.).
- December 2011–February 1, 2012: Initial inputs, including draft reports.
- March 1, 2012: Final inputs, including full reports.
- After March 1, 2012: Continued development and delivery of ongoing assessment capacity.

Teams are encouraged to provide their inputs as quickly as possible (*i.e.*, ahead of these target dates), to facilitate review by the NCADAC. Failure to provide inputs in a timely way means that the information may not be considered in the preparation of the 2013 report, although it could still be considered with respect to subsequent assessment products or be made available online as an NCA resource if documentation requirements have been met.

For more information on the NCA process, including the strategic plan, proposed report outline, and information about the NCADAC, please visit <http://assessment.globalchange.gov>.

Request for Expressions of Interest. Teams of experts and/or individuals in climate-related fields (“teams”) are invited to submit expressions of interest (EOI) in providing technical inputs and/or offering assessment capacity (collectively “inputs”) on one or more topics related to National Climate Assessment regional, sectoral, and cross-cutting topics proposed for the 2013 report and to the ongoing NCA process. The full list of topics proposed for the report and information about the ongoing NCA process is available from <http://www.globalchange.gov/what-we-do/assessment/backgroundprocess>.

Teams are encouraged to maximize transparency, openness, and information quality in their inputs. Only inputs centered on documented evidence, expert elicitation, and defensible scientific foundations are likely to be considered by the NCADAC. Peer reviewed literature and public data sources should be cited to the maximum extent feasible. Any data that are used in these inputs need to be publicly available, the analyses and approaches should be documented, and the conclusions able to be confirmed by

independent scientific evaluation processes. Ultimately, such inputs will help populate an online database of NCA-related activities and products, which will be made available to the NCADAC and to the general public. Teams are encouraged to also publish their inputs via other methods (*e.g.*, in scientific or technical journals).

Teams interested in providing inputs to the NCA are encouraged to review the “Potential Technical Inputs and Assessment Capacities” and “Suggested Best Practices” available online at <http://www.globalchange.gov/what-we-do/assessment/backgroundprocess/notices> and to prepare a short EOI (up to but not exceeding two pages, plus a list of key participants and affiliations) describing their anticipated inputs. All EOIs submitted in response to this notice must include a primary point of contact and contact information (phone number, mailing address, e-mail address, Web site if applicable, institutional affiliation(s) if applicable). In addition, it is recommended that EOIs include:

- NCA topic(s) of interest, including
 - Scope and specific range of issues to be addressed (reference NCA report outline topics and/or NCA objectives).
 - Spatial and temporal scales as appropriate.
 - Plans for developing and/or using scenarios that will frame the analysis.
- A short description of the specific input(s) that the team intends to provide (see “Potential Technical Inputs and Assessment Capacities” available online at <http://www.globalchange.gov/what-we-do/assessment/backgroundprocess/notices>), including the ability to provide adequate resources to support the creation of these inputs in a timely manner
- Background information about the team and sponsoring organization(s)
 - Team members.
 - Names and affiliations.
 - Short biographies (preferably 1 paragraph each, no more than 1 page per person) of key team members, including areas of expertise, previous assessment experience, and current role in the climate/global change arena.
 - Sponsoring organization(s), if appropriate.
 - Short history and mission.
 - Current role in the climate/global change arena.
 - Number and type of members, stakeholders, or general public served by the organization.
 - Typical scale(s) at which the organization works and/or has expertise (international, national, regional/state, or local).

■ Type of organization (government, private sector, non-profit, academia, etc.).

EOIs should be submitted via e-mail to Emily Therese Cloyd, NCA Public Participation and Engagement Coordinator, at ecloyd@usgcrp.gov. Ms. Cloyd will direct EOIs, as appropriate, to NCA coordinators for the relevant topics and to appropriate members of the NCADAC. Teams may also contact Ms. Cloyd with additional questions or comments about the NCA report and process.

EOIs may be submitted at any time and will be reviewed on a rolling basis; teams should expect acknowledgement of receipt of their EOI within two weeks of submission. EOIs will be shared with the NCADAC. EOIs will not be used as pre-approval mechanisms for the submission of inputs; any feedback provided on submitted EOIs will be primarily aimed at ensuring inputs will be responsive to the needs of the NCA. EOIs will allow the NCADAC to anticipate contributions from teams and facilitate coordination and cooperation across teams that express interest in similar topics. The purpose of the EOIs and any subsequent involvement of NCA staff and the NCADAC is not to constrain the efforts of teams, but rather to improve coverage, identify gaps, and reduce redundancies amongst all of the inputs. Ultimately, the inputs remain the work of the teams that produce them and will be presented as such to the NCADAC.

Dated: July 6, 2011.

Terry Bevels,

Deputy Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2011-17379 Filed 7-12-11; 8:45 am]

BILLING CODE 3510-KD-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board (RFPB); Cancellation of Meeting

AGENCY: Department of Defense; Office of the Secretary of Defense Reserve Forces Policy Board.

ACTION: Notice of advisory committee meeting cancellation.

SUMMARY: On June 16, 2011 (76 FR 35191), the Department of Defense Reserve Policy Board announced a meeting to be held July 26–27, 2011, from 7:30 a.m. to 4:30 p.m. at the Pentagon in conference room 3E863. Pursuant to the Federal Advisory

Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Federal advisory committee meeting is cancelled due to a lack of a quorum with the exception of an administrative work meeting that will be conducted on July 26, 2011.

FOR FURTHER INFORMATION CONTACT:

LtCol Kenneth Olivo, Designated Federal Officer, (703) 697–4486 (Voice), (703) 693–5371 (Facsimile), RFPB@osd.mil. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300. Web site: <http://ra.defense.gov/rfpb/>.

SUPPLEMENTARY INFORMATION:

Agenda: An administrative work meeting will be conducted on July 26, 2011.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, this administrative meeting is not open to the public.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: July 7, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011-17557 Filed 7-12-11; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Department of Defense; Uniformed Services University of the Health Sciences.

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of Regents of the Uniformed Services University of the Health Sciences (USU).

DATES: Tuesday, August 9, 2011.

8 a.m. to 11 a.m. (Open Session)

11 a.m. to 12:30 p.m. (Closed Session)

ADDRESSES: Everett Alvarez Jr. Board of Regents Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT:

Janet S. Taylor, Designated Federal Officer, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3066. Ms. Taylor can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held May 20, 2011; acceptance of reports from working committees; recommendations regarding the approval of faculty appointments and promotions in the School of Medicine and the Graduate School of Nursing; and recommendations regarding the awarding of master's and doctoral degrees in the biomedical sciences and public health. The President, USU will also present a report. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, most of the meeting is open to the public. Seating is on a first-come basis. Members of the

public wishing to attend the meeting should contact Janet S. Taylor at the address and phone number noted below. The closed portion of this meeting is authorized by 5 U.S.C. 552b(c)(6) as the subject matter involves personal and private observations.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address listed above. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the August 2011 meeting or at a future meeting.

Dated: July 8, 2011.
Aaron Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
 [FR Doc. 2011-17558 Filed 7-12-11; 8:45 am]
BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150 the Department of Defense announces that Defense Intelligence Agency Advisory Board and two of its subcommittees will meet on August 4 and 5, 2011. The meetings are closed to the public.

DATES: The meetings will be held on August 4, 2011 (from 8:30 a.m. to 5 p.m.) and on August 5, 2011 (from 8:30 a.m. to 4 p.m.).

ADDRESSES: The meeting will be held at Bolling Air Force Base.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Harrison, (703) 647-5102, Alternate Designated Federal Official, DIA Office for Congressional and Public Affairs, Pentagon, 1A874, Washington, DC 20340.

Committee's Designated Federal Official: Mr. William Caniano, (703) 614-4774, DIA Office for Congressional and Public Affairs, Pentagon, 1A874 Washington, DC 20340.
William.Caniano@dia.mil.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

For the Advisory Board and its subcommittee to review and discuss DIA operations and capabilities in support of current operations.

Agenda

August 4, 2011

8:30 a.m	Convene Subcommittee Meetings	Mr. William Caniano, Designated Federal Official. Mrs. Mary Margaret Graham, Chairman.
10 a.m	Break	
10:15 a.m	Subcommittee Business.	
12 p.m	Lunch.	
1 p.m	Reconvene for Subcommittee business.	
3 p.m	Break.	
3:15 p.m	Subcommittee business.	
5 p.m	Adjournment.	

August 5, 2011

8:30 a.m	Convene Full Advisory Board Meeting and Administrative Business.	Mr. William Caniano, Designated Federal Official. Mrs. Mary Margaret Graham, Chairman.
9 a.m	Briefings and Discussion.	
10:30 a.m	Break.	Mr. William Caniano, Designated Federal Official. Mrs. Mary Margaret Graham, Chairman.
10:30 a.m	Briefings and Discussion.	
12 p.m	Lunch.	
1:15 p.m	Discussions with LTG Burgess, Director, DIA	
4 p.m	Adjourn.	

Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102-3.155, the Defense Intelligence Agency has determined that all meetings shall be closed to the public. The Director, DIA, in consultation with his General Counsel, has determined in writing that the public interest requires that all sessions of the Board's meetings will be closed to the public because they will be concerned with classified information and matters covered by 5 U.S.C. 552b(c)(1).

Written Statements

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, and section 10(a)(3) of the Federal Advisory Board Committee Act of 1972, the public or interested organizations may submit written statements at any time to the DIA Advisory Board regarding its missions and functions. All written statements shall be submitted to the Designated Federal Official for the DIA Advisory Board. He will ensure that written statements are provided to the membership for their consideration. Written statements may also be

submitted in response to the stated agenda of planned committee meetings. Statements submitted in response to this notice must be received by the Designated Federal Official at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after that date may not be provided or considered by the Board until its next meeting. All submissions provided before that date will be presented to the Board members before the meeting that is subject of this

notice. Contact information for the Designated Federal Official is listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 5, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011-17519 Filed 7-12-11; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, and in accordance with Section 10(a)(2) of Public Law, the Defense Health Board (DHB) announces that it will meet on August 8 and 9, 2011. Subject to the availability of space, the meeting will be open to the public on August 8 from 9:30 a.m. to 12:30 p.m. and from 1:30 to 5 p.m.

DATES: The meeting will be held—

August 8, 2011

8-9 a.m. (Administrative Working Meeting).

9:30 a.m.-12:30 p.m. (Open Session).

12:30-1:30 p.m. (Administrative Working Meeting).

1:30-5 p.m. (Open Session).

August 9, 2011

8 a.m.-3 p.m. (Administrative Working Meeting).

ADDRESSES: The August 8, 2011 meeting will be held at the Hotel Murano, 1320 Broadway, Tacoma, WA 98402. The August 9, 2011 meeting will include a site visit to Madigan Army Medical Center. Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT**, e-mailed to dhb@ha.osd.mil, or faxed to (703) 681-3317.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Bader, Director, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041-3206, (703) 681-8448, Ext. 1215, Fax: (703)-681-3317, Christine.bader@tma.osd.mil.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The purpose of the meeting is to address and deliberate both pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

Agenda

On August 8, 2011, the DHB will receive briefings regarding military health needs and priorities. The DHB Trauma and Injury Subcommittee will present an update of current activities as well as its findings and proposed recommendations regarding tranexamic acid use in theater. The Board will vote on issues presented by the Psychological Health External Advisory Subcommittee, including its Final Report on psychotropic medication prescription practices and use, and complementary and alternative medicine use in the DoD. The Psychological Health External Advisory Subcommittee will also present its recommendations regarding the use of Automated Neuropsychological Assessment Metrics. The Board will receive informational briefings about the DoD Institutional Review Board, the Military Infectious Diseases Research Program, and from DoD personnel with deployment experience.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165, and subject to the availability of space, the DHB meeting from 9:30 a.m. to 12:30 p.m. and from 1:30 to 5 p.m. on August 8, 2011 is open to the public. The public is encouraged to register for the meeting. Additional information, agenda updates, and meeting registration are available online at the DHB Web site, <http://www.health.mil/dhb/default.cfm>.

Written Statements

Any member of the public wishing to provide input to the DHB should submit a written statement in accordance with 41 CFR 102-3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this notice. Written statements should be no longer than two type-written pages and must address the following detail: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**) at any point. If the written

statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the DHB until the next open meeting.

The DFO will review all timely submissions with the DHB President, and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The DFO, in consultation with the DHB President, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the DHB.

Special Accommodations

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681-8448 Ext. 1280 by July 26, 2011.

Dated: July 7, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011-17536 Filed 7-12-11; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 276. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 276 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* July 1, 2011.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign

areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 275. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only

notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 276 are updated rates for

Alaska, Guam, Hawaii, Midway Islands, Northern Mariana Islands, and Wake Island.

Dated: July 7, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA							
[OTHER]							
	01/01 - 12/31	\$110.00		\$96.00		\$206.00	2/1/2011
ADAK							
	01/01 - 12/31	\$120.00		\$79.00		\$199.00	7/1/2003
ANCHORAGE [INCL NAV RES]							
	05/01 - 09/15	\$181.00		\$104.00		\$285.00	2/1/2011
	09/16 - 04/30	\$99.00		\$96.00		\$195.00	2/1/2011
BARROW							
	01/01 - 12/31	\$159.00		\$95.00		\$254.00	10/1/2002
BETHEL							
	01/01 - 12/31	\$157.00		\$99.00		\$256.00	7/1/2011
BETTLES							
	01/01 - 12/31	\$135.00		\$62.00		\$197.00	10/1/2004
CLEAR AB							
	01/01 - 12/31	\$90.00		\$82.00		\$172.00	10/1/2006
COLDFOOT							
	01/01 - 12/31	\$165.00		\$70.00		\$235.00	10/1/2006
COPPER CENTER							
	09/16 - 05/14	\$95.00		\$95.00		\$190.00	1/1/2011
	05/15 - 09/15	\$139.00		\$99.00		\$238.00	1/1/2011
CORDOVA							
	01/01 - 12/31	\$95.00		\$130.00		\$225.00	1/1/2011
CRAIG							
	10/01 - 03/31	\$151.00		\$80.00		\$231.00	2/1/2011
	04/01 - 09/30	\$236.00		\$89.00		\$325.00	2/1/2011
DELTA JUNCTION							
	05/01 - 09/30	\$145.00		\$65.00		\$210.00	1/1/2011
	10/01 - 04/30	\$115.00		\$64.00		\$179.00	1/1/2011
DENALI NATIONAL PARK							
	06/01 - 08/31	\$135.00		\$88.00		\$223.00	1/1/2011

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	09/01 - 05/31	\$90.00		\$84.00		\$174.00	1/1/2011
DILLINGHAM							
	05/15 - 10/15	\$185.00		\$111.00		\$296.00	1/1/2011
	10/16 - 05/14	\$169.00		\$109.00		\$278.00	1/1/2011
DUTCH HARBOR-UNALASKA							
	01/01 - 12/31	\$121.00		\$99.00		\$220.00	2/1/2011
EARECKSON AIR STATION							
	01/01 - 12/31	\$90.00		\$77.00		\$167.00	6/1/2007
EIELSON AFB							
	05/05 - 09/15	\$175.00		\$107.00		\$282.00	1/1/2011
	09/16 - 05/04	\$75.00		\$98.00		\$173.00	1/1/2011
ELFIN COVE							
	01/01 - 12/31	\$200.00		\$45.00		\$245.00	8/1/2010
ELMENDORF AFB							
	05/01 - 09/15	\$181.00		\$104.00		\$285.00	2/1/2011
	09/16 - 04/30	\$99.00		\$96.00		\$195.00	2/1/2011
FAIRBANKS							
	05/05 - 09/15	\$175.00		\$107.00		\$282.00	1/1/2011
	09/16 - 05/04	\$75.00		\$98.00		\$173.00	1/1/2011
FOOTLOOSE							
	01/01 - 12/31	\$175.00		\$18.00		\$193.00	10/1/2002
FT. GREELY							
	05/01 - 09/30	\$145.00		\$65.00		\$210.00	1/1/2011
	10/01 - 04/30	\$115.00		\$64.00		\$179.00	1/1/2011
FT. RICHARDSON							
	05/01 - 09/15	\$181.00		\$104.00		\$285.00	2/1/2011
	09/16 - 04/30	\$99.00		\$96.00		\$195.00	2/1/2011
FT. WAINWRIGHT							
	05/05 - 09/15	\$175.00		\$107.00		\$282.00	1/1/2011
	09/16 - 05/04	\$75.00		\$98.00		\$173.00	1/1/2011
GAMBELL							
	01/01 - 12/31	\$105.00		\$39.00		\$144.00	1/1/2011
GLENNALLEN							
	05/15 - 09/15	\$139.00		\$99.00		\$238.00	1/1/2011

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	09/16 - 05/14	\$95.00		\$95.00		\$190.00	1/1/2011
HAINES							
	01/01 - 12/31	\$107.00		\$101.00		\$208.00	1/1/2011
HEALY							
	06/01 - 08/31	\$135.00		\$88.00		\$223.00	1/1/2011
	09/01 - 05/31	\$90.00		\$84.00		\$174.00	1/1/2011
HOMER							
	05/15 - 09/15	\$167.00		\$117.00		\$284.00	1/1/2011
	09/16 - 05/14	\$79.00		\$115.00		\$194.00	1/1/2011
JUNEAU							
	05/01 - 09/30	\$149.00		\$127.00		\$276.00	1/1/2011
	10/01 - 04/30	\$109.00		\$123.00		\$232.00	1/1/2011
KAKTOVIK							
	01/01 - 12/31	\$165.00		\$86.00		\$251.00	10/1/2002
KAVIK CAMP							
	01/01 - 12/31	\$150.00		\$69.00		\$219.00	10/1/2002
KENAI-SOLDOTNA							
	05/15 - 09/15	\$179.00		\$117.00		\$296.00	4/1/2011
	09/16 - 05/14	\$89.00		\$109.00		\$198.00	4/1/2011
KENNICOTT							
	01/01 - 12/31	\$259.00		\$115.00		\$374.00	2/1/2011
KETCHIKAN							
	05/01 - 09/30	\$140.00		\$90.00		\$230.00	2/1/2011
	10/01 - 04/30	\$99.00		\$86.00		\$185.00	2/1/2011
KING SALMON							
	05/01 - 10/01	\$225.00		\$91.00		\$316.00	10/1/2002
	10/02 - 04/30	\$125.00		\$81.00		\$206.00	10/1/2002
KLAWOCK							
	04/01 - 09/30	\$236.00		\$89.00		\$325.00	2/1/2011
	10/01 - 03/31	\$151.00		\$80.00		\$231.00	2/1/2011
KODIAK							
	05/01 - 09/30	\$141.00		\$120.00		\$261.00	2/1/2011
	10/01 - 04/30	\$99.00		\$117.00		\$216.00	2/1/2011
KOTZEBUE							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	\$189.00		\$114.00		\$303.00	2/1/2011
KULIS AGS							
	05/01 - 09/15	\$181.00		\$104.00		\$285.00	2/1/2011
	09/16 - 04/30	\$99.00		\$96.00		\$195.00	2/1/2011
MCCARTHY							
	01/01 - 12/31	\$259.00		\$115.00		\$374.00	2/1/2011
MCGRATH							
	01/01 - 12/31	\$165.00		\$69.00		\$234.00	10/1/2006
MURPHY DOME							
	05/05 - 09/15	\$175.00		\$107.00		\$282.00	1/1/2011
	09/16 - 05/04	\$75.00		\$98.00		\$173.00	1/1/2011
NOME							
	01/01 - 12/31	\$150.00		\$126.00		\$276.00	2/1/2011
NUIQSUT							
	01/01 - 12/31	\$180.00		\$53.00		\$233.00	10/1/2002
PETERSBURG							
	01/01 - 12/31	\$110.00		\$96.00		\$206.00	2/1/2011
POINT HOPE							
	01/01 - 12/31	\$200.00		\$49.00		\$249.00	1/1/2011
POINT LAY							
	01/01 - 12/31	\$225.00		\$23.00		\$248.00	1/1/2011
PORT ALEXANDER							
	01/01 - 12/31	\$150.00		\$43.00		\$193.00	8/1/2010
PORT ALSWORTH							
	01/01 - 12/31	\$135.00		\$88.00		\$223.00	10/1/2002
PRUDHOE BAY							
	01/01 - 12/31	\$170.00		\$68.00		\$238.00	1/1/2011
SELDOVIA							
	09/16 - 05/14	\$79.00		\$115.00		\$194.00	1/1/2011
	05/15 - 09/15	\$167.00		\$117.00		\$284.00	1/1/2011
SEWARD							
	10/01 - 04/30	\$85.00		\$96.00		\$181.00	2/1/2011
	05/01 - 09/30	\$172.00		\$106.00		\$278.00	2/1/2011
SITKA-MT. EDGE CUMBE							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	05/01 - 09/30	\$119.00		\$114.00		\$233.00	2/1/2011
	10/01 - 04/30	\$99.00		\$112.00		\$211.00	2/1/2011
SKAGWAY							
	05/01 - 09/30	\$140.00		\$90.00		\$230.00	2/1/2011
	10/01 - 04/30	\$99.00		\$86.00		\$185.00	2/1/2011
SLANA							
	10/01 - 04/30	\$99.00		\$55.00		\$154.00	2/1/2005
	05/01 - 09/30	\$139.00		\$55.00		\$194.00	2/1/2005
SPRUCE CAPE							
	05/01 - 09/30	\$141.00		\$120.00		\$261.00	2/1/2011
	10/01 - 04/30	\$99.00		\$117.00		\$216.00	2/1/2011
ST. GEORGE							
	01/01 - 12/31	\$129.00		\$55.00		\$184.00	6/1/2004
TALKEETNA							
	01/01 - 12/31	\$100.00		\$89.00		\$189.00	10/1/2002
TANANA							
	01/01 - 12/31	\$150.00		\$126.00		\$276.00	2/1/2011
TOK							
	05/01 - 09/30	\$89.00		\$129.00		\$218.00	2/1/2011
	10/01 - 04/30	\$71.00		\$126.00		\$197.00	2/1/2011
UMIAT							
	01/01 - 12/31	\$350.00		\$35.00		\$385.00	10/1/2006
VALDEZ							
	09/16 - 04/30	\$119.00		\$111.00		\$230.00	2/1/2011
	05/01 - 09/15	\$189.00		\$120.00		\$309.00	2/1/2011
WAINWRIGHT							
	01/01 - 12/31	\$175.00		\$83.00		\$258.00	1/1/2011
WASILLA							
	10/01 - 04/30	\$99.00		\$103.00		\$202.00	2/1/2011
	05/01 - 09/30	\$153.00		\$108.00		\$261.00	2/1/2011
WRANGELL							
	05/01 - 09/30	\$140.00		\$90.00		\$230.00	2/1/2011
	10/01 - 04/30	\$99.00		\$86.00		\$185.00	2/1/2011
YAKUTAT							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	\$105.00		\$94.00		\$199.00	1/1/2011
AMERICAN SAMOA							
	AMERICAN SAMOA 01/01 - 12/31	\$139.00		\$122.00		\$261.00	12/1/2010
GUAM							
	GUAM (INCL ALL MIL INSTAL) 01/01 - 12/31	\$159.00		\$86.00		\$245.00	7/1/2011
HAWAII							
	[OTHER] 01/01 - 12/31	\$104.00		\$109.00		\$213.00	7/1/2011
	CAMP H M SMITH 01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
	EASTPAC NAVAL COMP TELE AREA 01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
	FT. DERUSSEY 01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
	FT. SHAFTER 01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
	HICKAM AFB 01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
	HONOLULU 01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
	ISLE OF HAWAII: HILO 01/01 - 12/31	\$104.00		\$109.00		\$213.00	7/1/2011
	ISLE OF HAWAII: OTHER 01/01 - 12/31	\$180.00		\$116.00		\$296.00	7/1/2011
	ISLE OF KAUAI 01/01 - 12/31	\$243.00		\$127.00		\$370.00	7/1/2011
	ISLE OF MAUI 01/01 - 12/31	\$169.00		\$120.00		\$289.00	7/1/2011
	ISLE OF OAHU 01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
	KEKAHA PACIFIC MISSILE RANGE FAC						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	\$243.00		\$127.00		\$370.00	7/1/2011
KILAUEA MILITARY CAMP							
	01/01 - 12/31	\$104.00		\$109.00		\$213.00	7/1/2011
LANAI							
	01/01 - 12/31	\$249.00		\$145.00		\$394.00	7/1/2011
LUALUALEI NAVAL MAGAZINE							
	01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
MCB HAWAII							
	01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
MOLOKAI							
	01/01 - 12/31	\$131.00		\$97.00		\$228.00	7/1/2011
NAS BARBERS POINT							
	01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
PEARL HARBOR							
	01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
SCHOFIELD BARRACKS							
	01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
WHEELER ARMY AIRFIELD							
	01/01 - 12/31	\$177.00		\$116.00		\$293.00	7/1/2011
MIDWAY ISLANDS							
MIDWAY ISLANDS							
	01/01 - 12/31	\$125.00		\$62.00		\$187.00	7/1/2011
NORTHERN MARIANA ISLANDS							
[OTHER]							
	01/01 - 12/31	\$55.00		\$72.00		\$127.00	10/1/2002
ROTA							
	01/01 - 12/31	\$130.00		\$93.00		\$223.00	7/1/2011
SAIPAN							
	01/01 - 12/31	\$121.00		\$94.00		\$215.00	7/1/2011
TINIAN							
	01/01 - 12/31	\$85.00		\$74.00		\$159.00	7/1/2011
PUERTO RICO							
[OTHER]							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	\$62.00		\$57.00		\$119.00	10/1/2002
AGUADILLA							
	01/01 - 12/31	\$124.00		\$113.00		\$237.00	9/1/2010
BAYAMON							
	01/01 - 12/31	\$195.00		\$128.00		\$323.00	9/1/2010
CAROLINA							
	01/01 - 12/31	\$195.00		\$128.00		\$323.00	9/1/2010
CEIBA							
	01/01 - 12/31	\$210.00		\$141.00		\$351.00	11/1/2010
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]							
	01/01 - 12/31	\$210.00		\$141.00		\$351.00	11/1/2010
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]							
	01/01 - 12/31	\$195.00		\$128.00		\$323.00	9/1/2010
HUMACAO							
	01/01 - 12/31	\$210.00		\$141.00		\$351.00	11/1/2010
LUIS MUNOZ MARIN IAP AGS							
	01/01 - 12/31	\$195.00		\$128.00		\$323.00	9/1/2010
LUQUILLO							
	01/01 - 12/31	\$210.00		\$141.00		\$351.00	11/1/2010
MAYAGUEZ							
	01/01 - 12/31	\$109.00		\$112.00		\$221.00	9/1/2010
PONCE							
	01/01 - 12/31	\$149.00		\$87.00		\$236.00	9/1/2010
SABANA SECA [INCL ALL MILITARY]							
	01/01 - 12/31	\$195.00		\$128.00		\$323.00	9/1/2010
SAN JUAN & NAV RES STA							
	01/01 - 12/31	\$195.00		\$128.00		\$323.00	9/1/2010
VIRGIN ISLANDS (U.S.)							
ST. CROIX							
	04/15 - 12/14	\$135.00		\$92.00		\$227.00	5/1/2006
	12/15 - 04/14	\$187.00		\$97.00		\$284.00	5/1/2006
ST. JOHN							
	04/15 - 12/14	\$163.00		\$98.00		\$261.00	5/1/2006
	12/15 - 04/14	\$220.00		\$104.00		\$324.00	5/1/2006

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ST. THOMAS							
	04/15 - 12/14	\$240.00		\$105.00		\$345.00	5/1/2006
	12/15 - 04/14	\$299.00		\$111.00		\$410.00	5/1/2006
WAKE ISLAND							
WAKE ISLAND							
	01/01 - 12/31	\$145.00		\$42.00		\$187.00	7/1/2011

[FR Doc. 2011-17436 Filed 7-12-11; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF EDUCATION**[CFDA Nos. 84.007, 84.033, 84.038, 84.063, and 84.268]****Free Application for Federal Student Aid (FAFSA); Information To Be Verified for the 2012-2013 Award Year****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice.

SUMMARY: On October 29, 2010, the Secretary published in the **Federal Register** (75 FR 66832) final regulations related to program integrity issues in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). Included in these regulations were changes to subpart E of part 668 of title 34 of the Code of Federal Regulations, which includes the Department's regulations for the verification of information submitted on

a FAFSA by an applicant for financial assistance from the Federal student assistance programs authorized under title IV of the HEA. New § 668.56(a) provides that for each award year the Secretary will publish in the **Federal Register** a notice announcing the FAFSA information that an institution and an applicant may be required to verify. New § 668.57(d) further provides that if an applicant is selected to verify FAFSA information specified in the **Federal Register** notice, the applicant must provide the documentation that the Secretary has specified for that information in the **Federal Register** notice. Accordingly, through this notice, the Secretary announces the FAFSA information that an institution and an applicant may be required to verify and the acceptable documentation that an applicant must provide to an institution to verify such FAFSA information for the 2012-2013 award year, which is the first award year following the effective date of the regulations.

FOR FURTHER INFORMATION CONTACT:

Jacquelyn C. Butler, U.S. Department of Education, Office of Postsecondary Education, 1990 K Street, NW., room 8053, Washington, DC 20006. Telephone: (202) 502-7890.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following chart lists the FAFSA information that an institution and an applicant and, if appropriate his or her parent(s) or spouse, may be required to verify and the acceptable documentation that an applicant must provide to an institution for that selected item for the 2012-2013 award year.

FAFSA information selected for verification	Acceptable documentation for FAFSA information selected for verification
<p><i>All applicants</i></p> <ul style="list-style-type: none"> • Number of household members 	<p>A statement signed by both the applicant and one of the parents of a dependent student, or only the applicant if the applicant is an independent student, that lists—</p> <ul style="list-style-type: none"> (a) The name and age of each household member; and (b) The relationship of that household member to the applicant. <p>Note that verification of number of household members is not required if:</p> <ul style="list-style-type: none"> (a) For a dependent student, the household size reported on the FAFSA is two and the parent is single, separated, divorced, or widowed; or three if the parents are married; or (b) For an independent student, the household size reported on the FAFSA is one and the applicant is single, separated, divorced, or widowed; or two if the applicant is married. (§ 668.57(b))
<ul style="list-style-type: none"> • Number of household members enrolled at least half-time in eligible postsecondary institutions. 	<ul style="list-style-type: none"> (1) A statement signed by both the applicant and one of the parents of a dependent student, or only the applicant if the applicant is an independent student, listing— <ul style="list-style-type: none"> (a) The name and age of each household member who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the 2012-2013 award year; and (b) The name of the eligible institution(s) that each household member is or will be attending during the 2012-2013 award year. (§ 668.57(c)) (2) If an institution has reason to believe that an applicant's FAFSA information or the statement provided by the applicant regarding the number of household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain a statement from each institution named by the applicant that the household member in question is or will be attending that institution on at least a half-time basis unless—

FAFSA information selected for verification	Acceptable documentation for FAFSA information selected for verification
<ul style="list-style-type: none"> Food Stamps—Supplemental Nutrition Assistance Program (SNAP). Child Support Paid <p><i>Income information for tax filers</i>¹</p> <ul style="list-style-type: none"> Adjusted Gross Income (AGI) U.S. income tax paid Untaxed IRA Distributions Untaxed Pensions Education Credits IRA Deductions Tax Exempt Interest <p><i>Income information for tax filers with special circumstances</i>¹.</p> <ul style="list-style-type: none"> Adjusted Gross Income (AGI) U.S. income tax paid Untaxed IRA Distributions Untaxed Pensions Education Credits IRA Deductions Tax Exempt Interest <p><i>Income information for nontax filers</i></p> <ul style="list-style-type: none"> Income earned from work 	<p>(a) The institution the student is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend; or</p> <p>(b) The institution has information indicating that the household member in question will be attending the same institution as the applicant.</p> <p>Note that verification is not required if the reported number of household members enrolled at least half-time in eligible postsecondary institutions is one. (§ 668.57(c)(2))</p> <p>Documentation from the agency that issues the Food Stamps benefit or alternative documentation as determined by the institution to be sufficient to confirm that the applicant received Food Stamps in 2010 or 2011. (§ 668.57(d))</p> <p>(1) A statement signed by the applicant, spouse, or parent who paid child support certifying—</p> <ul style="list-style-type: none"> (a) The amount of child support paid; (b) The name of the person to whom child support was paid; and (c) The name of the children for whom child support was paid. <p>(2) If the institution believes the information provided in the signed statement is inaccurate, the applicant must provide the institution with documentation such as—</p> <ul style="list-style-type: none"> (a) A copy of the separation agreement or divorce decree that shows the amount of child support to be provided; (b) A statement from the individual receiving the child support showing the amount provided; or (c) Copies of the child support checks or money order receipts. (§ 668.57(d)) <p>(1) Information that the Secretary has identified as having been obtained from the Internal Revenue Service (IRS) (commonly referred to as the IRS Data Retrieval Process) and not having been changed. (§ 668.57(a)(2))</p> <p>(2) If a tax filer is unable to provide the income information through the IRS Data Retrieval Process, a transcript² obtained from the IRS that lists tax account information of the tax filer for tax year 2011. (§ 668.57(a)(1)(i))</p> <p>For an individual that filed a joint income tax return and is married to someone other than the individual included on a joint income tax return, or is separated, divorced, or widowed:</p> <ul style="list-style-type: none"> (1) A transcript² obtained from the IRS that lists tax account information of the tax filer(s) for tax year 2011; and (§ 668.57(a)(1)(i)) (2) A copy of IRS Form W-2³ for each source of employment income received for tax year 2011 by— <ul style="list-style-type: none"> (a) The parent(s) of a dependent student whose income is used in the calculation of the applicant's expected family contribution (EFC) if the parent(s) filed a joint income tax return and the parent(s) is married to someone other than the individual included on a joint income tax return, or is separated, divorced, or widowed. (§ 668.57(a)(1)(ii)) (b) An independent student who filed a joint income tax return and who is married to someone other than the individual included on a joint income tax return, or who is separated, divorced, or widowed. (§ 668.57(a)(1)(iii)) <p>For an individual who is required to file a U.S. income tax return and has been granted a filing extension by the IRS:</p> <ul style="list-style-type: none"> (1) A copy of IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the IRS for tax year 2011, or a copy of the IRS's approval of an extension beyond the automatic six-month extension if the individual requested an additional extension of the filing time for tax year 2011. After the income tax return is filed, an institution may request that an individual granted a filing extension submit a transcript² from the IRS that lists tax account information for tax year 2011. If an institution receives the transcript², it must verify the AGI and taxes paid by the tax filer(s). (§ 668.57(a)(3)(ii) and (a)(4)(ii)(A)) (2) A copy of IRS Form W-2³ for each source of employment income received for tax year 2011 by an individual that has been granted a filing extension by the IRS for tax year 2011. (§ 668.57(a)(4)(ii)(B)) (3) A signed statement by a self-employed individual certifying the amount of the AGI and the U.S. income tax paid for tax year 2011. (§ 668.57(a)(4)(ii)(B)) <p>For an individual that has requested a transcript that lists tax account information for tax year 2011 and the IRS, a government of a U.S. territory or commonwealth or a foreign central government cannot provide or locate a transcript that lists tax account information:</p> <ul style="list-style-type: none"> (1) A copy of IRS Form W-2³ for each source of employment income received for tax year 2011 (§ 668.57(a)(3)(iii) and (a)(4)(iii)(A)) (2) A signed statement by a self-employed individual or an individual that has filed an income tax return with a government of a U.S. territory or commonwealth or a foreign central government certifying the amount of AGI and taxes paid for tax year 2011. (§ 668.57(a)(4)(iii)(B)) <p>For an individual that has not filed and, under IRS rules or other applicable government agency rules, is not required to file an income tax return—</p> <ul style="list-style-type: none"> (1) A copy of IRS Form W-2³ for each source of employment income received for tax year 2011. (§ 668.57(a)(3)(i) and (a)(4)(i)(B)) (2) A signed statement certifying— <ul style="list-style-type: none"> (a) That the individual has not filed and is not required to file an income tax return for tax year 2011; and (§ 668.57(a)(3)(i) and (a)(4)(i))

FAFSA information selected for verification	Acceptable documentation for FAFSA information selected for verification
	(b) The sources of income earned from work as reported on the FAFSA and amounts of income from each source for tax year 2011 that is not reported on IRS Form W-2. (§ 668.57(a)(3)(i) and (a)(4)(i))

¹ A tax filer that filed an income tax return other than an IRS form, such as a foreign or Puerto Rican tax form, must use the income information (converted to U.S. dollars) from the lines of the relevant income tax return that corresponds most closely to the income information reported on a U.S. income tax return.

² If an institution determines that obtaining a transcript from the IRS is not possible, the institution may accept a copy of the 2011 income tax return that includes the signature of the filer of the income tax return or one of the filers of a joint income tax return, or the preparer's Social Security Number, Employer Identification Number or that has the Preparer Tax Identification Number and has been signed, stamped, typed, or printed with the name and address of the preparer of the income tax return. § 668.57(a)(1)(i) and § 668.57(a)(7)

³ If an individual who is required to submit an IRS Form W-2 is unable to obtain one in a timely manner, the institution may permit that individual to provide a signed statement that includes the amount of income earned from work, the source of that income, and the reason that the IRS Form W-2 is not available in a timely manner.

Other Sources for Detailed Information

We provide a more detailed discussion on the verification process in the following publications:

- *Preamble to the Program Integrity Notice of Proposed Rulemaking (NPRM)* (See 75 FR 34825–34834 (June 18, 2010)).

- *Preamble and Subpart E of the Program Integrity Final Regulations* (See 75 FR 66902–66913 and 66954–66958 (October 29, 2010)).

- *Dear Colleague Letter GEN-11-03.*
- *2012–2013 Application and Verification Guide.*

- *2012–2013 ISIR Guide.*
- *2012–2013 SAR Comment Codes and Text.*

- *2012–2013 COD Technical Reference.*

You may access these publications at the Information for Financial Aid Professionals Web site at: <http://www.ifap.ed.gov>.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: <http://www.gpo.gov/fdsys>. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: <http://www.federalregister.gov>. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070c–1070c–4, 1070g, 1071–1087–2, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: July 8, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–17655 Filed 7–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission

AGENCY: U.S. Department of Education, Office for Civil Rights.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Equity and Excellence Commission (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

DATES: July 28th, 2011.

Time: 9:00 a.m. to 5:30 p.m.

ADDRESSES: The Commission will meet in Washington, DC at Potomac Center Plaza, 550 12th Street, SW., Washington, DC 20202 in the auditorium (room 10026).

FOR FURTHER INFORMATION CONTACT:

Stephen Chen, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. *e-mail:* equitycommission@ed.gov. *Telephone:* (202) 453–6624.

SUPPLEMENTARY INFORMATION: On July 28th, 2011 from 9:00 a.m. to 5:30 p.m., the Equity and Excellence Commission will hold an open meeting in Washington, DC at the U.S. Department of Education's suite at Potomac Center Plaza.

The purpose of the Commission is to collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving

school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The agenda for the Commission's third meeting will include a discussion of the proposed recommendations and the best structure for the report. The agenda will include any relevant reports from the subcommittees, as well. Due to time constraints, there will not be a public comment period, but individuals wishing to provide comment(s) may contact the Equity Commission via e-mail at equitycommission@ed.gov.

Individuals interested in attending the meeting must register in advance because seating may be limited. Please contact Kimberly Watkins-Foote at (202) 260–8197 or by e-mail at equitycommission@ed.gov. Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or materials in alternative format) should notify Watkins-Foote at (202) 260–8197 no later than July 14th, 2011. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202 from the hours of 9 a.m. to 5 p.m. E.S.T.

Russlynn Ali,

Assistant Secretary, Office for Civil Rights.

[FR Doc. 2011–17628 Filed 7–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY**Advanced Scientific Computing
Advisory Committee Charter Renewal**

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, Section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Advanced Scientific Computing Advisory Committee will be renewed for a two-year period beginning July 1, 2011. The Committee provides advice and recommendations concerning the Advanced Scientific Computing program in response only to charges from the Director of the Office of Science, except as described:

- Periodic reviews of elements of Advanced Scientific Computing Research program and recommendations based thereon;
- Advice on the computing long-range plans, priorities, and strategies to address more effectively the scientific aspects of advanced scientific computing including the relationship of advanced scientific computing to other scientific disciplines;
- Advice on appropriate levels and sector allocation of funding to develop those plans, priorities, and strategies and to help maintain appropriate balance among elements of the program; and
- Advice on national policy and scientific issues related to advanced scientific computing that are of concern to the Department of Energy as requested by the Secretary or the Under Secretary for Science.

Additionally, the renewal of the Advanced Scientific Computing Advisory Committee has been determined to be essential to conduct Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

Further information regarding this Advisory Committee may be obtained from Mrs. Christine Chalk at (301) 903–5152.

Issued at Washington, DC, on July 1, 2011.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2011–17647 Filed 7–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY**Basic Energy Sciences Advisory
Committee**

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, August 2, 2011, 8:30 a.m.–5 p.m., Wednesday, August 3, 2011, 9 a.m. to 12 noon.

ADDRESSES: Bethesda North Hotel and Conference Center; 5701 Marinelli Road, Bethesda, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Katie Perine; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone: (301) 903–6529.

SUPPLEMENTARY INFORMATION:

Purpose of the meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative agenda: Agenda will include discussions of the following:

- News from Office of Science/DOE.
- News from the Office of Basic Energy Sciences.
- Materials by Design.
- R&D Coordination.
- Follow-up on the Mesoscale Charge to BESAC.

Public participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Katie Perine at 301–903–6594 (fax) or katie.perine@science.doe.gov (e-mail). Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and

copying within 30 days at the Freedom of Information Public Reading Room; 1G–033, Forrestal Building; 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on July 7, 2011.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2011–17650 Filed 7–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY**DOE/NSF High Energy Physics
Advisory Panel**

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 27, 2011; 9 a.m.–6 p.m. and Friday, October 28, 2011; 9 a.m. to 1 p.m.

ADDRESSES: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–1298

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, October 27, 2011 and Friday, October 28, 2011

- Discussion of Department of Energy High Energy Physics Program.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.

- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before

or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301-903-1298 or John.Kogut@science.doe.gov. You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's *Office of High Energy Physics Advisory Panel website*.

Issued at Washington, DC, on July 7, 2011.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2011-17654 Filed 7-12-11; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11-507-000]

Tres Palacios Gas Storage LLC; Notice of Application

Take notice that on July 5, 2011, Tres Palacios Gas Storage LLC (TPGS), Two Brush Creek Blvd., Suite 200, Kansas City, Missouri 64112, filed pursuant to section 7 of the Natural Gas Act (NGA) and part 157 the Commission's regulations, an abbreviated application for an amendment to its certificate of public convenience and necessity issued on September 20, 2007, Docket No. CP07-90-000; authorizing TPGS to implement limited changes to the certificated Tres Palacios Storage Facility located in Matagorda County, Texas. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

TPGS proposes the substitution of a 15,300 hp single electric-driven centrifugal compressor for five not-yet-installed certificated 4,800hp gas-fired compressors and to construct associated appurtenances and facilities necessary for the safe operation of the new compressor (Compressor Substitution Project). The proposed project will be constructed within the existing footprint of the Tres Palacios Storage Facility on

previous cleared land. TPGS does not propose any changes in the capacity, injection rates, or withdrawal rates authorized by the Commission. Also, TPGS does not propose any changes to the previously authorized services for the Tres Palacios Storage Facility.

Any questions regarding this application should be directed to Marvin T. Griff, Husch Blackwell LLP, 750 17th Street, NW., Washington, DC 20006-4656; telephone (202) 378-2311, fax (202) 378-2319, or e-mail marvin.griff@huschblackwell.com.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 28, 2011.

Dated: July 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011-17596 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11-500-000]

El Paso Natural Gas Company; Notice of Application

Take notice that on June 28, 2011, El Paso Natural Gas Company (El Paso), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP11-500-000, a request for authority,

pursuant to 18 CFR part 157 and section 7(b) of the Natural Gas Act, to abandon, by removal, the previously abandoned, in place, Benson Compressor Station (Benson Station) located in Cochise County, Arizona. Specifically, El Paso proposes to remove all aboveground facilities including the foundation, existing pipeline compression facilities and appurtenances at the Benson Station. El Paso states that the removal of the Benson Station will be in the public interest in order to discourage future vandalism, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Susam C. Stires, Director, Regulatory affairs Department, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, CO 80944, telephone no. (719) 667-7514, facsimile no. (719) 667-7534, and e-mail: EPMGRegulatoryaffairs@elpaso.com.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426,

a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: July 28, 2011.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17595 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2283-064]

FPL Energy Maine Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Supplement to recreation and land/trail management plan.
- b. *Project No.:* 2283-064.
- c. *Date Filed:* March 25, 2011.
- d. *Applicant:* FPL Energy Maine Hydro, LLC.
- e. *Name of Project:* Gulf Island-Deer Rips Hydroelectric Project.
- f. *Location:* Androscoggin River in Androscoggin County, Maine.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.
- h. *Applicant Contact:* Ernest Deluca, (800) 371-7774, ernest.m.deluca@nexteraenergy.com.
- i. *FERC Contact:* Mark Carter, (678) 245-3083, mark.carter@ferc.gov.
- j. *Deadline for filing comments:* August 8, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters

can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. Please include the project number (P-2283-064) on any comments filed.

k. *Description of Application:* Pursuant to the Commission's Order Modifying and Approving Recreation Plan and Land/Trail Management Plan issued March 25, 2010, FPL Energy Maine Hydro, LLC (licensee) filed an assessment of lands within 200 feet of the project impoundments with the goal of identifying additional lands needed for project purposes. As a result of its assessment, the licensee found that no additional lands are needed for project purposes and proposes no changes to the project boundary.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P-2283) to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments:* In determining the appropriate action to take, the Commission will consider all comments filed. Any comments must be received on or before the specified comment date for the particular application.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17589 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Project No. 12690–003]****Public Utility District No. 1 of Snohomish County, WA; Notice Concluding Pre-Filing Process and Approving Process Plan and Schedule**

a. *Type of Filing:* Notice of Intent to File a License Application for an Original License for a Hydrokinetic Pilot Project.

b. *Project No.:* 12690–003.

c. *Date Filed:* December 28, 2009.

d. *Submitted by:* Public Utility District No. 1 of Snohomish County, Washington (Snohomish PUD).

e. *Name of Project:* Admiralty Inlet Pilot Tidal Project.

f. *Location:* On the east side of Admiralty Inlet in Puget Sound, Washington, about 1 kilometer west of Whidbey Island, entirely within Island County, Washington. The project would not occupy any Federal lands.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Applicant Contact:* Steven J. Klein, Public Utility District of Snohomish County, Washington, P.O. Box 1107,

2320, California Street, Everett, WA 98206–1107; (425) 783–8473.

i. *FERC Contact:* David Turner (202) 502–6091.

j. *Snohomish PUD has filed with the Commission:* (1) A notice of intent (NOI) to file an application for a pilot hydrokinetic hydropower project and a draft license application with monitoring plans; (2) a request for waivers of certain Integrated Licensing Process (ILP) regulations necessary for expedited processing of a license application for a hydrokinetic pilot project; (3) a proposed process plan and schedule; and (4) a request to be designated as the non-Federal representative for section 7 of the Endangered Species Act (ESA) consultation and for section 106 consultation under the National Historic Preservation Act.

k. A notice was issued on December 30, 2009 soliciting comments on the draft license application from agencies and stakeholders. Comments were filed by Federal and state agencies, and non-governmental organizations.

l. Snohomish PUD was designated as the non-Federal representative for section 7 of the Endangered Species Act consultation and for section 106

consultation under the National Historic Preservation Act on November 7, 2008.

m. The proposed Admiralty Inlet Pilot Tidal Project would consist of (1) Two 10-meter, 500-kilowatt (kW) Open-Centre Turbines supplied by OpenHydro Group Ltd., mounted on completely submerged gravity foundations; (2) two 250-meter service cables connected at a subsea junction box or spliced to a 0.5-kilometer subsea transmission cable, connecting to a cable termination vault about 50 meters from shore; (3) two 81-meter-long buried conduits containing the two DC transmission lines from the turbines and connecting to a power conditioning and control building; (4) a 140-meter-long buried cable from the control building to the grid; and (5) appurtenant facilities for operation and maintenance. The estimated annual generation of the project is 383,000 kilowatt-hours.

n. The pre-filing process has been concluded and the requisite regulations have been waived such that the process and schedule indicated below can be implemented.

o. Post-filing process schedule. The post-filing process will be conducted pursuant to the following schedule. Revisions to the schedule may be made as needed.

Milestones	Dates
Final license application expected	August 31, 2011.
Issue notice of acceptance and ready for environmental analysis and request for interventions	September 15, 2011.
Issue biological assessment	September 15, 2011.
Recommendations, Conditions, Comments and Interventions due	October 17, 2011.
Issue notice of availability of environmental assessment	December 16, 2011.
Comments due and 10(j) resolution, if needed	January 16, 2012.

p. Register online at <http://ferc.gov/esubscribenow.htm> to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011–17588 Filed 7–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Project No. 12095–000]****Metropolitan Water District of Southern California; Notice of Effectiveness of Surrender**

On September 17, 2001, the Commission issued an Order Granting Exemption from Licensing (Conduit)¹ to the Metropolitan Water District of Southern California (exemptee) for the OC–88 Small Conduit Hydroelectric Project No. 12095. The project was located in the City of Lake Forest in Orange County, California at the OC–88 Service Connection, which transfers water from the Allen-McCulloch Pipeline to the South County Pipeline.

¹ *Metropolitan Water District of Southern California*, 96 FERC ¶ 62,259 (2001).

On September 20, 2005, staff from the Commission's San Francisco Regional Office conducted an operation inspection of the project. During the inspection, the exemptee advised Commission staff that it intended to surrender the exemption and Commission staff observed that the exemptee had capped off the penstock and electrically disconnected the generator.

On November 4, 2005, the exemptee filed an application with the Commission to surrender its exemption stating that, due to modifications at the pump station, the physical connections necessary for operation of the turbine generator no longer existed.

Accordingly, the Commission hereby gives notice and accepts the Metropolitan Water District of Southern California's surrender of its exemption from licensing for the OC–88 Small Conduit Hydroelectric Project issued on

September 17, 2001, effective November 4, 2005.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17587 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11-115-000]

Regency Intrastate Gas LP; Notice of Filing

Take notice that on July 7, 2011, Regency Intrastate Gas LP, (Regency) filed to revise its Operating Statement. Regency states this version supersedes and replaces the version filed in Docket No. PR11-114-000 on June 7, 2011, as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 19, 2011.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17586 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11-3980-000]

ORNI 14; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of ORNI 14's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17598 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11-3959-000]

Post Rock Wind Power Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Post Rock Wind Power Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17597 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11-3992-000]

L&P Electric, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of L&P Electric, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard

to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17592 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11-3989-000]

Michigan Wind 2, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Michigan Wind 2, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is July 27, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17591 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER11-3987-000]****Mesquite Solar 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of Mesquite Solar 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17590 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. PR09-9-001]****Northwest Natural Gas Company; Notice of Motion for Extension of Rate Case Filing Deadline**

Take notice that on July 6, 2011, Northwest Natural Gas Company (NW Natural) filed a request for an extension consistent with the Commission's revised policy of periodic review from a triennial to a five year period. The Commission in Order No. 735 modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.¹ Therefore, NW Natural requests that the date for its next rate filing be extended to December 11, 2013, which is five years from the date of NW Natural's most recent rate filing with this Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>.

¹ Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on Monday, July 18, 2011.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17599 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. OR11-17-000]****Agave Energy Company; Notice for Temporary Waiver of Filing and Reporting Requirements**

Take notice that on June 24, 2011, pursuant to Rule 202 of the Commission's Rules of Practice and Procedure, 18 CFR 385.202 (2011), Agave Energy Company (AEC) requests that the Commission grant a temporary waiver of the Interstate Commerce Act (ICA) Section 6 and Section 20 tariff filing and reporting requirements applicable to interstate common carrier pipelines.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference

to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17594 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR11-12-000]

Saddle Butte Pipeline, LLC; Notice for Temporary Waiver of Filing and Reporting Requirements

Take notice that on May 31, 2011, pursuant to Rule 202 of the Commission's Rules of Practice and Procedure, 18 CFR 385.202 (2011), Saddle Butte Pipeline, LLC, requests that the Commission grant a temporary waiver of the tariff filing and reporting requirements applicable to interstate oil pipelines under sections 6 and 20 of the Interstate Commerce Act (ICA) and parts

341 and 357 of the Commission's regulations.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Dated: July 7, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-17593 Filed 7-12-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Proposed Agency Information Collection

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before September 12, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Becky Sipes by e-mail at Becky.Sipes@nnsa.doe.gov or by fax at 505-845-4571.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Becky Sipes at Becky.Sipes@nnsa.doe.gov.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. "New;" (2) *Information Collection Request Title:* NNSA Certificate of Compliance for Radioactive Materials Packages; (3) *Type of Request:* New; (4) *Purpose:* This information collection is in support of an NNSA issued Certificate of Compliance (CoC). The CoC documents that NNSA has reviewed and approved a radioactive material package as meeting the applicable safety standards

set forth in Title 10, Code of Federal Regulations, Part 71, "Packaging and Transportation of Radioactive Material." The CoC defines the packaging, radioactive material content, and transportation restrictions required to ensure safe shipment; (5) *Annual Estimated Number of Respondents*: 50; (6) *Annual Estimated Number of Total Responses*: 50; (7) *Annual Estimated Number of Burden Hours*: 150; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: \$4,000.

Statutory Authority: DOE Order 460.1C "Packaging and Transportation Safety" DOE Order 461.1B "Packaging and Transportation for Offsite Shipment of Materials of National Security Interest," Title 10 Code of Federal Regulations Part 71 "Packaging and Transportation of Radioactive Material" and Title 49 Code of Federal Regulations 173.7(d).

Issued in Washington, DC on July 6, 2011.

Ahmad Al-Daouk,

Director, Office of Packaging and Transportation, Office of Nuclear Safety, Nuclear Operations, and Governance Reform, Office of Defense Programs, National Nuclear Security Administration.

[FR Doc. 2011-17656 Filed 7-12-11; 8:45 am]

BILLING CODE 6450-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-SFUND-2011-0585; FRL-9437-4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on 7/31/11. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-

SFUND-2011-0585 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* Boynton.Lisa@epa.gov.

- *Fax:* 202-564-8729.

- *Mail:* ICR Renewal for Local Governments Reimbursement Application, Environmental Protection Agency, Mailcode: 5104A, 1200 Pennsylvania Ave., NW., Washington, DC.

- *Instructions:* Direct your comments to Docket ID No. EPA-HQ-SFUND-2011-0585. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.)

FOR FURTHER INFORMATION CONTACT: Lisa Boynton, Office of Solid Waste and Emergency Response, Office of Emergency Management, (5104A) Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202-564-2487; *fax number:* 202-564-8729; *e-mail address:* Boynton.Lisa@epa.gov.

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-SFUND-2011 which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Superfund Docket is 202-566-1677.

Use <http://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No. EPA-HQ-SFUND-2007-0840.

Affected entities: Entities potentially affected by this action are Local Governments that apply for reimbursement under this program.

Title: Local Governments Reimbursement Application.

ICR numbers: EPA ICR No. 1425.05, OMB Control No. 2050-0077.

ICR status: This ICR is currently scheduled to expire on 7/31/11. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Agency requires applicants for reimbursement under this program authorized under Section 123 of CERCLA to submit an application that demonstrates consistency with program eligibility requirements. This is necessary to ensure proper use of the Superfund. EPA reviews the information to ensure compliance with all statutory and program requirements. The applicants are local governments

who have incurred expenses, above and beyond their budgets, for hazardous substance response. Submission of this information is voluntary and to the applicant's benefit.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 30.

Frequency of response: voluntary, on occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 270 hours.

Estimated total annual costs: \$7,493. This includes an estimated burden cost of \$18.50/hour and there are no capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

At this time, the Agency anticipates that because the number of respondents has decreased, the estimated annual burden has also decreased.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the

technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 6, 2011.

Kim Jennings,

Acting Deputy Director, Office of Emergency Management.

[FR Doc. 2011-17617 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2003-0026 FRL-9435-5]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Water Quality Inventory Reports (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on December 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OW-2003-0026 by one of the following methods:

- <http://www.regulations.gov> (our preferred method): Follow the on-line instructions for submitting comments.

- *E-mail:* OW-Docket@epa.gov.

- *Mail:* EPA Water Docket,

Environmental Protection Agency, Mailcode (28221-T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2003-0026 EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is

an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket, visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Alice Mayo, Assessment and Watershed Protection Division, Office of Water, Mail Code: 4503T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-566-1184; fax number: 202-566-1437; e-mail address: Mayio.alice@epa.gov.

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID number EPA-HQ-OW-2003-0026 which is available for online viewing at <http://www.regulations.gov> or in-person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

Use <http://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the Agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line of the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are States, Territories and Tribes with Clean Water Act (CWA) responsibilities.

Title: National Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e)) (Renewal).

ICR numbers: EPA ICR Number 1560.10, OMB Control Number 2040-0071.

ICR status: This ICR is currently scheduled to expire on December 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: The Section 305(b) reports contain information on the water quality standards attainment status of assessed waters, and, when waters are impaired, the pollutants and sources affecting water quality. This information helps track State progress in controlling water pollution. Section 303(d) of the Clean Water Act requires States to identify and rank waters which cannot meet water quality standards (WQS) following the implementation of technology-based controls. Under Section 303(d), States are also required to establish total maximum daily loads (TMDLs) for listed waters not meeting standards as a result of pollutant discharges. In developing the Section 303(d) lists, States are required to consider various sources of water quality related data and information, including the Section 305(b) State water quality reports. Section 106(e) requires that states annually update monitoring data and include it in their Section 305(b) report. Section 314(a) requires states to report on the condition of their publicly-owned lakes within the Section 305(b) report.

EPA’s Assessment and Watershed Protection Division (AWPD) works with its Regional counterparts to review and approve or disapprove State Section 303(d) lists and TMDLs from 56 respondents (the 50 States, the District of Columbia, and the five Territories). Section 303(d) specifically requires States to develop lists and TMDLs “from time to time,” and EPA to review and approve or disapprove the lists and the TMDLs. EPA also collects State 305(b) reports from 59 respondents (the 50 States, the District of Columbia, five Territories, and 3 River Basin commissions).

Tribes are not required to submit 305(b) reports. However, to meet the needs of Tribes at all levels of development, EPA has prepared guidance that presents the basic steps a Tribe should take to collect the water

quality information it needs to make effective decisions about its program, its goals, and its future directions. Tribal water quality monitoring and reporting activities are covered under the Section 106 Tribal Grants Program and not included in the burden estimates for this ICR.

This announcement includes the re-approval of current, ongoing activities related to 305(b) and 303(d) reporting and TMDL development for the period of January 1, 2012 through December 31, 2014. During the period covered by this ICR renewal, respondents will: complete their 2012 305(b) reports and 2012 303(d) lists; complete their 2014 305(b) reports and 2014 303(d) lists; transmit annual electronic updates of ambient monitoring data via the Water Quality Exchange; and continue to develop TMDLs according to their established schedules. EPA will prepare biennial Reports to Congress for the 2012 reporting cycle and for the 2014 cycle, and EPA will review TMDL submissions from respondents.

The burdens of specific activities that States undertake as part of their 305(b) and 303(d) programs are derived from a project among EPA, States and other interested stakeholders to develop a tool for estimating the States' resource needs for State water quality management programs. This project has developed the State Water Quality Management Workload Model (SWQMWM), which estimates and sums the workload involved in more than one hundred activities or tasks comprising a State water quality management program. Over twenty States contributed information about their activities that became the basis for the model. According to the SWQMWM, to meet 305(b) and 303(d) reporting requirements the States will conduct: watershed monitoring and characterization; modeling and analysis; development of a TMDL document for public review; public outreach; formal public participation; tracking; planning; legal support; etc. In general, respondents have conducted each of these reporting and record keeping activities for past 305(b) and 303(d) reporting cycles and thus have staff and procedures in place to continue their 305(b) and 303(d) reporting programs. The burden associated with these tasks is estimated in this ICR to include the total number of TMDLs that may be submitted during the period covered by this ICR.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is expected to average 66,590 hours per response. Burden means the total time,

effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The current ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:
Estimated total number of potential respondents: 59.

Frequency of response: Biannually.
Estimated total average number of responses for each respondent: 1.
Estimated total annual burden hours: 3,740,017.

Estimated total annual costs: \$177,837,808. These costs are entirely attributed to labor, with \$0 attributable to capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is no change expected in the estimates for the total respondent burden hours identified in the ICR currently approved by OMB. EPA may revise these burden estimates before submitting this ICR to OMB based on comments received from the public and updated labor costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 30, 2011.

Benita Best-Wong,
Acting Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 2011-17613 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9437-3]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the Chartered SAB on July 28, 2011 to conduct a quality review of a draft SAB report, Review of EPA's Draft Oil Spill Research Strategy.

DATES: The public teleconference will be held on July 28, 2011 from 12 p.m. to 3 p.m. (Eastern Daylight Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconference may contact Dr. Angela Nugent, Designated Federal Officer (DFO). Dr. Nugent may be contacted at the EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by telephone/voice mail at (202) 564-2188; fax at (202) 565-2098; or e-mail at nugent.angela@epa.gov. General information concerning the EPA Science Advisory Board can be found on the EPA Web site at <http://www.epa.gov/sab>.

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public teleconference to conduct a quality review of an SAB draft report entitled *Review of EPA's Draft Oil Spill Research Strategy*. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA's Office of Research and Development (ORD) has developed a draft Oil Spill Research Strategy in light of the 2010 Deepwater Horizon oil spill in the Gulf of Mexico. The

Deepwater Horizon oil spill in the Gulf of Mexico had fundamentally different characteristics than previous near-shore oil spills creating new research needs for oil spill treatment methods (e.g., in-situ burning, bioremediation, and the use of dispersants), and potential human health and ecological impacts. ORD requested SAB advice on its draft Oil Spill Research Strategy. The SAB Oil Spill Research Strategy Review Panel has considered ORD's strategy and prepared an advisory report that will undergo quality review by the chartered SAB.

Background information about the SAB advisory activity can be found on the SAB Web site at http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Oil%20Spill%20Research%20Strategy?OpenDocument.

Availability of Meeting Materials: The agenda and other materials in support of the teleconference will be placed on the SAB Web site at <http://www.epa.gov/sab> in advance of the teleconference.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer directly. **Oral Statements:** In general, individuals or groups requesting an oral presentation at a teleconference will be limited to three minutes. Those interested in being placed on the public speakers list for the July 28, 2011 teleconference should contact Dr. Nugent at the contact information provided above no later than July 21, 2011. **Written Statements:** Written statements should be supplied to the DFO via email at the contact information noted above by July 21, 2011 for the teleconference so that the information may be made available to the Panel members for their consideration. Written statements

should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site.

Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Nugent (202) 564-2188 or nugent.angela@epa.gov. To request accommodation of a disability, please contact Dr. Nugent preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: July 6, 2011.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011-17616 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0191; FRL-8880-9]

Pesticide Program Dialogue Committee, Pesticide Registration Improvement Act Process Improvement Workgroup; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Pesticide Program Dialogue Committee (PPDC) provides a forum for a diverse group of stake holders to provide advice to the pesticide program on various pesticide regulatory, policy, and program implementation issues. In meeting its Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Endangered Species Act (ESA) obligations, EPA continues to seek advice from the PPDC and its workgroup, the Pesticide Registration Improvement Act (PRIA) Process Improvement Work Group. EPA plans to meet its ESA consultation obligations through the pesticide registration review

program. EPA seeks input on improving the current process for stake holder input on endangered species' consultations, such as when and where stake holders should provide information regarding a pesticide during the registration review process. This meeting of the PRIA Process Improvement Work Group continues the dialogue between EPA and interested stake holders on improving opportunities for stake holder involvement on endangered species' consultations. The agenda will be available on the Web at <http://www.epa.gov/oppfead1/cb/ppdc/pria/index.html>.

DATES: The meeting will be held on July 27, 2011 from 9 a.m. to 12 p.m.

Requests to participate in the meeting must be received on or before July 22, 2011.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at Room 12100, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leovey, Immediate Office, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; *telephone number:* (703) 305-7328; *fax number:* (703) 308-4776; *e-mail address:* leovey.elizabeth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are concerned about the re-evaluation of registered pesticides and the information used to assess risks to endangered species under FIFRA, and the Federal Food, Drug and Cosmetic Act (FFDCA). Other potentially affected entities may include but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532), agricultural workers and farmers; pesticide industry trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia;

public health organizations; and the public. Since other entities may also be interested, the Agency has not attempted to describe all specific entities that may be affected by this action.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA-HQ-OPP-2007-0191. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

II. Background

The Office of Pesticide Programs (OPP) is entrusted with the responsibility of ensuring the safety of the American food supply, protection and education of those who apply or are exposed to pesticides occupationally or through use of products, and the general protection of the environment and special ecosystems from potential risks posed by pesticides. The PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92-463, in September 1995 for a 2 year-term and has been renewed every 2 years since that time. The PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from the use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower and commodity groups; Federal and

State/local/Tribal governments; the general public; academia; and public health organizations. Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request. Copies of the minutes of past meetings of this workgroup are available on the internet at <http://www.epa.gov/pesticides/ppdc/pria/index.html>.

III. How can I request to participate in this meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA-HQ-OPP-2007-0191, must be received on or before July 22, 2011.

List of Subjects

Environmental protection, Agriculture, Chemicals, Endangered species, Foods, Pesticide Registration, Pesticide labels, Pesticides and pests.

Dated: July 6, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2011-17619 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-1017; FRL-8881-1]

Product Cancellation Order for Certain Pesticide Registrations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a cancellation order in the **Federal Register** of February 25, 2011, concerning the voluntary cancellation of multiple pesticide products. This document is being issued to correct the cancellations of two Phaeton Corporation pesticide products.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-0123; fax number: (703) 308-8090; e-mail address: tatinclaux.maia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-1017. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

II. Background

The cancellation of Phaeton Corporation's pesticide products, EPA Reg. Nos. 28293-160 and 28293-215 was published in the **Federal Register** of February 25, 2011 (76 FR 10587) (FRL-8833-4). The Cancellation Order was issued following a Notice announcing the requests to voluntarily cancel these products published in the **Federal Register** of November 10, 2010. This Notice was subject to a 30-day comment period during which no comments were received regarding the subject product registrations.

These products were cancelled in error because Phaeton Corporation did not request their voluntary cancellation. The Agency mistakenly included these products in the Cancellation Order and notification was not received during the comment period prior to issuance of the final Cancellation Order. Therefore, EPA Reg. Nos. 28293-160 and 28293-215 should not have been included in the Cancellation Order published in the **Federal Register** of February 25, 2011, and these products maintain active registrations at this time.

III. What does this correction do?

The preamble for FR Doc. 2011-4140 published in the **Federal Register** of February 25, 2011 (76 FR 10587) (FRL-8863-4) is corrected as follows:

1. On page 10588, in Table 1, remove the entries for EPA Reg. No. 028293-00160, for Unicorn House and Carpet Spray 11, and EPA Reg. No. 028293-

00215, for Unicorn IGR Pressurized Spray.

2. On page 10590, in Table 4, remove the Company No. 28293 and the company name and address for "Phaeton Corporation."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 7, 2011.

Richard P. Keigwin, Jr.,

*Director, Pesticide Re-evaluation Division,
Office of Pesticide Programs.*

[FR Doc. 2011-17641 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9437-5]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the R&H Oil/Tropicana Superfund Site in San Antonio, Bexar County, Texas.

The proposed administrative settlement requires one (1) settling *de minimis* party, Lester L. Kelly, to pay a total of \$8,128.73 as payment of response costs to the Hazardous Substances Superfund and the R&H Oil/Tropicana Superfund Site Special Account. The proposed administrative settlement includes a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the proposed administrative settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's responses to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202-2733.

DATES: Comments must be submitted on or before August 12, 2011.

ADDRESSES: The proposed administrative settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202-2733. A copy of the proposed settlement may be obtained from Kevin Shade, 1445 Ross Avenue, Dallas, Texas 75202-2733 or by calling (214) 665-2708. Comments should reference the R&H Oil/Tropicana Superfund Site in San Antonio, Bexar County, Texas, and EPA Docket Number 06-15-10, and should be addressed to Kevin Shade at the address listed above.

FOR FURTHER INFORMATION CONTACT: I-Jung Chiang, 1445 Ross Avenue, Dallas, Texas 75202-2733 or call (214) 665-2160.

Dated: July 4, 2011.

Al Armendariz,

Regional Administrator (6RA).

[FR Doc. 2011-17618 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2003-0200; FRL-8879-5]

Fenamiphos; Notice of Receipt of Request to Amend Use Deletion and Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's notice of receipt of a request to amend the order for the cancellation of products, voluntarily requested by the registrant and accepted by the Agency, containing the pesticide fenamiphos, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This request follows a December 10, 2008 **Federal Register** Amendment to Use Deletion and Product Cancellation Order, which extended the deadline for persons other than the registrant to sell and distribute one fenamiphos product, Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide, from November 30, 2008 until March 31, 2009. The Agency subsequently received a request from an end user to extend the sale and distribution deadline for Nemacur 3. If this request is granted, the Agency will extend the deadline for persons other than the registrant to sell and distribute Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264-731) for 1 year from the date of publication of the amended order.

Additionally, the Agency intends to prohibit use of existing stocks of all fenamiphos products 3 years from the date of publication of the amended order.

DATES: Comments must be received on or before August 12, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2003-0200, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. ATTN: Eric Miederhoff.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2003-0200. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other

contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Eric Miederhoff, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8028; fax number: (703) 308-7070; e-mail address: miederhoff.eric@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; fenamiphos pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through

regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

C. How can I get copies of this document and other related information?

1. **Docket.** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2003-0200. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The Docket Facility telephone number is (703) 305-5805.

2. **Electronic access.** You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr>.

II. What action is the agency taking?

This notice announces the proposed amendment of the December 10, 2003 use deletion and product cancellation order of fenamiphos products registered under section 3 of FIFRA, as amended on June 11, 2008 and December 10, 2008. The only registration that would be affected by the extension of the sale and distribution date is Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide, EPA Registration Number 264-731. The prohibition on the use of fenamiphos products 3 years after publication of the amended order would affect all fenamiphos product registrations.

On December 10, 2003, EPA published a Use Deletion and Product Cancellation Order in the **Federal Register** (68 FR 68901) (FRL-7332-5). The order prohibited, among other things, the manufacture and distribution of fenamiphos by Bayer Corporation, the sole technical registrant, after May 31, 2007, the effective cancellation date for the fenamiphos product registrations. The deadline established for Bayer Corporation followed a production cap on the manufacture of fenamiphos, which limited fenamiphos production to 500,000 pounds of active ingredient for the year ending May 31, 2003, and reduced production by 20% each subsequent year during the 5 year phase-out period. The order also prohibited the sale and distribution of fenamiphos by persons other than the registrant after May 31, 2008. These provisions were intended to provide a reasonable amount of time for the material to move through the channels of trade following the cessation of sale and distribution of fenamiphos products by the registrant on May 31, 2007.

In a June 11, 2008 **Federal Register** Amendment to Use Deletion and Product Cancellation Order (73 FR 33082) (FRL-8368-2), the Agency extended the May 31, 2008 deadline on the sale and distribution by persons other than the registrant through November 30, 2008. This action was taken in response to a request from the sole fenamiphos technical registrant, Bayer Environmental Science, to extend the deadline to allow distributors to sell existing stockpiles of Nemacur 10% Turf and Ornamental Nematicide (EPA Reg. No. 432-1291) and Nemacur 3 Emulsifiable Systemic Insecticide-

Nematicide (EPA Reg. No. 264-731) to end users.

In a December 10, 2008 **Federal Register** (73 FR 75097) (FRL-8389-8) Amendment to Use Deletion and Product Cancellation Order, the Agency further extended the November 30, 2008 deadline for the sale and distribution of Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264-731) through March 31, 2009. This action was taken in response to a request from an end user, Maui Pineapple, to extend the deadline for sale and distribution of Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264-731) from November 30, 2008 to March 31, 2009.

On August 20, 2010 the Agency received another request from Maui Pineapple to extend the deadline for sale and distribution of Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264-731) to allow a transfer of its remaining stocks of Nemacur 3 to other end users.

The original May 31, 2008 deadline for fenamiphos was established to provide a reasonable amount of time for the material to move through the channels of trade following the cessation of sale and distribution of fenamiphos products by the registrant, Bayer Environmental Science, on May 31, 2007. Extending the deadline for distributors to sell and distribute Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide would neither conflict with the Agency's application of the guidelines outlined in PR Notice 97-7, nor would it introduce more fenamiphos into the pesticide use cycle than had been stipulated by the terms of the 5 year phase-out. The extension would allow for a redistribution of existing material already in the hands of end users and no new fenamiphos products would enter the marketplace. If this request is granted, the Agency will extend the deadline for persons other than the registrant to sell and distribute Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264-731) for 1 year from the date of publication of the amended order.

However, the Agency also intends to prohibit use of all fenamiphos products in the United States 3 years from the date of publication of the amended order in the **Federal Register**. Previously, the Agency had allowed end users with existing stocks of products containing fenamiphos to continue to use these products until their stocks were exhausted, provided that the use complied with previously EPA-approved product label requirements for

the respective products. Considering the initial Product Cancellation Order for fenamiphos was issued in 2003, if the Agency permits a further extension, 11 years will have elapsed since the initial cancellation order was issued, and approximately 7 years will have elapsed from the effective cancellation of the fenamiphos products. When the Agency specified in the initial Product Cancellation Order that users may use existing stocks until exhausted, it did not anticipate that fenamiphos products would not move through the channels of trade and be depleted by end users in a timely manner.

Moreover, all pesticides sold or distributed in the United States generally must be registered by the EPA, based on scientific data showing that they will not cause unreasonable risks to human health or the environment when used as directed on product labeling. Due to the fact that fenamiphos product registrations were canceled as part of the voluntary phase-out, the Agency has determined that the registration review program, the periodic evaluation of pesticide safety, is not applicable to fenamiphos. The registration review of fenamiphos would have begun in 2008 if fenamiphos had active product registrations at that time. The Agency is concerned that the use of existing stocks of fenamiphos products has continued for an extended period since the last scientific risks assessments of its use, which were completed for the 2002 Fenamiphos Reregistration Eligibility Decision. Therefore, the Agency intends to prohibit all use of pesticide products containing fenamiphos 3 years from the date of publication of the amended order in the **Federal Register**.

III. What is the agency's authority for taking this action?

Section 6(a)(1) of FIFRA provides that the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is suspended or canceled under this section, or section 3 or 4, to such extent, under such conditions, and for such uses as the Administrator determines that such sale or use is not inconsistent with the purposes of this Act.

IV. Proposed Order Amendment

Pursuant to FIFRA section 6(a), EPA is proposing to amend the December 10, 2008 order to allow persons other than the registrant to sell and distribute the fenamiphos product, Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Registration Number 264-731), for 1 year from the publication of the amended order.

Accordingly, the Agency is proposing to order that the sale and distribution of products containing fenamiphos is prohibited, except for proper disposal or export pursuant to section 17 of FIFRA, provided, however, that persons other than the registrant are permitted to sell and distribute existing stocks of Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Registration Number 264-731) for 1 year from the publication of the amended order. The Agency further proposes to order that end users with existing stocks of any products containing fenamiphos may continue to use these products for 3 years from the date of publication of the amended order in the **Federal Register**, provided that the use complies with EPA-approved product label requirements for the respective products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 1, 2011.

Richard P. Keigwin, Jr.,
Director, Pesticide Re-evaluation Division,
Office of Pesticide Programs.

[FR Doc. 2011-17615 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2011-0507; FRL-8879-7]

Formetanate HCl and Acephate; Notice of Receipt of Requests to Voluntarily Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily amend their formetanate HCl and acephate product registrations to delete uses. The requests would delete formetanate HCl use in or on apple, pear and peach commodities, and acephate use in or on succulent green beans. The requests would not terminate the last formetanate HCl or acephate products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless one or more of the

registrants withdraws its request. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the uses are deleted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before August 12, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2011-0507, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2011-0507. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: For pesticide specific information contact: The Chemical Review Manager listed for the pesticide of interest:

Active Ingre- dient.	Chemical Review Manager, Telephone Number, E- mail Address
Formetanate HCl.	James Parker, (703) 306- 0469 parker.james@epa.gov
Acephate	Kelly Ballard, (703) 305- 8126 ballard.kelly@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark

the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests To Amend Registrations To Delete Uses

This notice announces receipt by EPA of requests from several registrants including Amvac Chemical Corporation, United Phosphorus, Inc., ChemStarr, LLC, Makhteshim Agan of North America, Inc., and Tide International, USA, Inc., to delete the succulent green bean use from acephate product registrations. This notice also announces receipt by EPA of a request from Gowan Company to delete apple, peach and pear uses from formetanate HCl product registrations.

In a letter dated May 31, 2011, Gowan Company requested that the EPA amend to delete apple, peach and pear uses from formetanate HCl product

registrations identified in Table 1 of Unit III. Specifically, Gowan Company is requesting to amend product registrations to delete formetanate HCl use on apples, peaches and pears in order to reduce dietary exposure and risks. This action by Gowan Company will aid in mitigating dietary risks identified in a December 7, 2010, dietary risk assessment. More information regarding this situation is available in the formetanate HCl docket (EPA-HQ-OPP-2010-0939). Formetanate HCl is a miticide/insecticide used on assorted crops. There are no residential uses for formetanate HCl products. Registered products containing formetanate HCl are intended to control thrips, lygus bugs, stink bugs, mites, scale, campylocyba, and spiders. Currently, formetanate HCl is only available as a wettable powder

formulation sold in water soluble bags. The deletion of these uses will not terminate the last formetanate HCl products registered in the United States.

In letters dated April 20, 2011 (Makhteshim Agan of North America, Inc.), May 10, 2011 (United Phosphorus, Inc.), May 13, 2011 (Amvac Chemical Corporation), and May 25, 2011 (ChemStarr, LLC., and Tide International, USA, Inc.), registrants requested that EPA amend their product registrations to delete the succulent green bean use from acephate product registrations which are identified in Table 1 of Unit III. Specifically, the registrants are requesting to amend product registrations to delete acephate use on succulent green beans. Acephate is an organophosphate insecticide, and is registered for use on a variety of field, fruit, and vegetable crops, and in food handling establishments. It is also

registered for outdoor use on field-grown ornamentals, pasture, rangeland, sod and golf course turf, and indoor use in institutional settings. The deletion of these uses will not terminate the last acephate products registered in the United States.

III. What action is the agency taking?

This notice announces receipt by EPA of requests from registrants to delete certain uses of formetanate HCl and acephate product registrations. The affected products and the registrants making the request are identified in Tables 1 and 2 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order amending the affected registrations.

TABLE 1—FORMETANATE HCl AND ACEPHATE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Chemical	Uses to be deleted
10163-264	Formetanate Hydrochloride Technical.	Formetanate HCl	Apple, Peach & Pear.
10163-265	Carzol SP Miticide/Insecticide in Water Soluble Packaging.	Formetanate HCl	Apple, Peach & Pear.
WA010033	Carzol SP Insecticide in Water Soluble Packaging.	Formetanate HCl	Apple & Pear.
5481-8975	Orthene Technical	Acephate	Succulent Green Beans.
70506-1	Acephate 75 Insecticide	Acephate	Succulent Green Beans.
70506-2	Acephate 90 Insecticide	Acephate	Succulent Green Beans.
70506-3	Acephate Technical	Acephate	Succulent Green Beans.
70506-8	Acephate 97UP Insecticide	Acephate	Succulent Green Beans.
70506-71	Acephate 90SP Manufacturing Use Product.	Acephate	Succulent Green Beans.
70506-76	Acephate 90DF Insecticide	Acephate	Succulent Green Beans.
81964-1	Acephate Technical	Acephate	Succulent Green Beans.
81964-3	Acephate 90% SP	Acephate	Succulent Green Beans.
83558-35	Acephate Technical	Acephate	Succulent Green Beans.
84229-7	Tide Acephate 90 WDG	Acephate	Succulent Green Beans.

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY AMENDMENTS

EPA Company No.	Company name and address
5481	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1250, Newport Beach, CA 92660.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366-5569.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY AMENDMENTS—Continued

EPA Company No.	Company name and address
70506	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
81964	ChemStarr, LLC, 21 Hubble, Irvine, CA 92618.
83558	Makhteshim Agan of North America, Inc., 4515 Falls of Neuse Road, Suite 300, Raleigh, NC 27609.
84229	Tide International, USA, Inc., 21 Hubble, Irvine, CA 92618.

IV. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of

any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The formetanate HCl and acephate registrants have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

V. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use deletion should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for amendments to delete uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for amendments to delete uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1 of Unit III.

Formetanate HCl registrants will be permitted to sell and distribute existing stocks of products under the previously approved labeling until November 30, 2011. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 1 of Unit III., except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of products, including those of (24c) Special Local Needs Registration, whose labels include the deleted uses until December 31, 2013, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted uses.

Once EPA has approved amended acephate product labels reflecting the

requested amendments to delete the succulent green bean use, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 1 of Unit III., except for export consistent with FIFRA section 17 or for proper disposal.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 30, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011-17359 Filed 7-12-11; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 12, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202-395-5167 or via e-mail to Nicholas_A.Fraser@omb.eop.gov and to the Federal Communications Commission via e-mail to PRA@fcc.gov and Paul.Laurenzano@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Paul Laurenzano on (202) 418-1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1120.

Title: Service Quality Measure Plan for Interstate Special Access Quarterly Reporting Requirements.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 3 respondents; 12 responses.

Estimated Time per Response: 25 hours.

Frequency of Response: Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151,152,

154(i), 154(j), 201–204, 214, 220(a), 251, 252, 271, 272, and 303(r).

Total Annual Burden: 300 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality:

The Commission anticipates that the Bell Operating Companies (BOCs) which are AT&T, Quest and Verizon, may request confidentiality protection for the special access performance information.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for a revision of this information collection.

The Commission previously adopted two new information collection requirements that received OMB approval. The monthly usage information requirement has expired, pursuant to the terms of the Section 272 Sunset Order. The burden for the monthly reporting requirement has been eliminated and we now seek continued OMB approval for the special access performance metric information requirement (quarterly reporting requirement) will be extended (continued).

The Commission has established a new framework to govern the provision of in-region, long-distance services that allows the BOCs to provide in-region, interstate, long distance services either directly or through affiliates that are neither section 272 separate affiliates nor rule 64.1903 affiliates, see Section 272 Sunset Order, FCC 07–159. Because the BOCs are no longer required to comply with the section 272 structural safeguards, the Commission established special access performance metrics reporting requirements, *i.e.*, ordering, provisioning, and repair and maintenance to ensure that the BOCs and their independent incumbent LEC affiliates do not engage in non-price discrimination in the provision of special access services to unaffiliated entities.

The information gleaned from these performance metrics will provide the Commission and other interested parties with reasonable tools to monitor each BOC's performance in providing these special access services to itself and its competitors.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–17559 Filed 7–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 12, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at Nicholas_A_Fraser@omb.eop.gov and to Paul Laurenzano, FCC, via e-mail PRA@fcc.gov and to Paul.Laurenzano@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Paul Laurenzano at (202) 418–1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0770.

Title: Sections 61.49 and 69.4, Price Cap Performance Review for Local Exchange Carriers, FCC 99–206 (New Services).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 21 respondents; 21 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 210 hours.

Annual Cost Burden: \$17,115.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality. The Commission is not requesting that the respondents submit confidential information to the FCC. However, respondents who wish to request confidential treatment of the information they believe to be confidential, may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. In the Fifth Report and Order in FCC 99–206, the Commission permitted price cap local exchange carriers (LECs) to introduce new services on a streamlined basis, without prior approval. The Commission adopted rules to eliminate the public interest showing required by section 69.4(g) and eliminated the new services test (except in the case of loop-based new services) required under sections 69.49(f) and (g). These modifications eliminated delays that existed for the introduction of new services as well as encouraging efficient investment and innovation. The information is used by the Commission to determine whether this is in the public interest for the incumbent LEC to offer a proposed new switched access service.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–17561 Filed 7–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 12, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202-395-5167 or via Internet at Nicholas.A.Fraser@omb.eop.gov and to Paul Laurenzano, FCC, via e-mail PRA@fcc.gov and to Paul.Laurenzano@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Paul Laurenzano at (202) 418-1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0147.

Title: Section 64.804, Extension of Unsecured Credit for Interstate and Foreign Communication Services to Candidates for Federal Office.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and

Responses: 13 respondents; 13 responses.

Estimated Time per Response: 8 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Obligation to Respond: Mandatory—Statutory authority for this information collection is contained in section 401 of the Federal Election Campaign Act of 1971, Public Law 92-225 together with the 1971 Revenue Act, Public Law 92-178 and Section 64.804 of the Commission's Rules and Regulations.

Total Annual Burden: 104 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the privacy Act.

Nature and Extent of Confidentiality: Ordinarily questions of a sensitive nature are not involved in the filed data. The Commission contends that areas in which information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise on special circumstances only. In such circumstances, the respondent is instructed on the appropriate procedures to follow to safeguard data. If respondents wish to request confidential treatment of their documents, they may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted to extend an existing collection, with no changes, that is expiring. Collection of this information is required by statute—section 401 of the Federal Election Campaign Act of 1971, Public Law 92-225, together with the 1971 Revenue Act, Public Law 92-178. Pursuant to Section 64.804(c) of the Commission's Rules and Regulations, before extending unsecured credit, a carrier must obtain a signed, written application for service which shall identify the applicant and the candidate and state whether or not the candidate assumes responsibility for charges, and which shall state that the applicant or applicants are liable for payment and that the applicant understands that the carrier will discontinue service under the provision of paragraph (d) of Section

64.804 if payment is not rendered. Section 64.804(f) also requires that the records of each account, involving the extension by a carrier of unsecured credit to a candidate or person on behalf of such candidate for common carrier communications services shall be maintained by the carrier as to show separately, for interstate and foreign communications services all charges, credits, adjustments, and security, if any, and balance receivable. Section 64.804(g) requires communications common carriers with operating revenues exceeding \$1 million who extend unsecured credit to a political candidate or person on behalf of such candidate for Federal office to report annually seven basic items, including balance due carrier, payment arrangements, if any, and date, action and status of any action taken at law for interstate and foreign communication services. The information collected is used by the Commission to monitor the extent of credit extended to Federal office candidates.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011-17564 Filed 7-12-11; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or

other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 12, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202-395-5167 or via e-mail to Nicholas_A_Fraser@omb.eop.gov and to the Federal Communications Commission via e-mail to PRA@fcc.gov and Paul.Laurenzano@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Paul Laurenzano on (202) 418-1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0169.

Title: Section 43.51 and 43.53, Reports and Records of Communications Common Carriers and Affiliates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 63 respondents; 1,218 responses.

Estimated Time per Response: .25 hours to 25 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151-154, 160, 161, 201-205, 211, 218, 220, 226, 303(g), 303(r), and 332.

Total Annual Burden: 5,247 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality:

In general, there is no need for confidentiality. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for an extension (no change in the reporting, recordkeeping and/or third party disclosure requirements).

There is no change in the Commission's previous burden estimates.

Sections 43.51 and 43.53 require common carriers to submit reports so that the FCC can monitor various activities of these carriers to determine the impact on the just and reasonable rates required by the Communications Act of 1934, as amended.

Section 43.51 requires that any communications common carrier described in paragraph 43.51(b) of the Commission's rules file with the Commission, within 30 days of execution a copy of each contract, agreement, concession, license, authorization, operating agreement or other agreement to which it is a party and any amendments.

Section 43.53 requires each communications common carrier engage directly in the transmission or reception of telegraph communications between the continental United States and any foreign country to file a report with the Commission within 30 days of the date of any arrangement concerning the division of the total telegraph charges on such communications other than transiting.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011-17560 Filed 7-12-11; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 12, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202-395-5167 or via Internet at Nicholas_A_Fraser@omb.eop.gov and to Paul Laurenzano, FCC, via e-mail PRA@fcc.gov and to Paul.Laurenzano@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Paul Laurenzano at (202) 418-1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0704.

Title: Sections 42.10, 42.11, 64.1900 and Section 254(g): Policies and Rules Concerning the Interstate, Interexchange Marketplace.

Form Number: N/A.

Type of Review: Extension of a currently-approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 700 respondents; 2,800 responses.

Estimated Time per Response: .50–2 hours.

Frequency of Response: Annual reporting requirements, third party disclosure requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in section 254(g) of the Communications Act of 1934, as amended.

Total Annual Burden: 2,450 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR section 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection as an extension (no change in reporting, third party disclosure requirements, and/or recordkeeping requirements) after this 60-day comment period in order to obtain the full three year clearance from the OMB. The four information collection requirements under this OMB Control Number are information disclosure requirements, internet posting requirements, recordkeeping requirements, and annual certification requirements. These requirements are necessary to provide consumers ready access to information concerning the rates, terms, and conditions governing the provision of interstate, domestic, interexchange services offered by nondominant interexchange carriers (IXCs) in a detariffed and increasingly competitive environment. The information collected under the information disclosure requirement and the Internet posting requirement must be disclosed to the public to ensure that consumers have access to the information they need to select a telecommunications carrier and

to bring to the Commission's attention possible violations of the Communications Act without a specific public disclosure requirement. The information collected under the recordkeeping and certification requirements will be used by the Commission to ensure that affected interexchange carriers fulfill their obligations under the Communications Act, as amended. There has been an adjustment since the previous submission because the number of responses was miscalculated in the previous submission. As such, the number of responses has increased from 700 to 2,800 (an increase of 2,100 responses).

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011-17563 Filed 7-12-11; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 12, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Paul Laurenzano, FCC, via e-mail PRA@fcc.gov and to Paul.Laurenzano@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Paul Laurenzano at (202) 418-1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0511.

Title: ARMIS Access Report.

Report No.: FCC Report 43-04.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 76 respondents; 76 responses.

Estimated Time per Response: 153 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 161, 219(b) and 220 of the Communications Act of 1934, as amended.

Total Annual Burden: 11,628 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: Ordinarily, questions of a sensitive nature are not involved in the ARMIS 43-04 Access Report. The Commission contends that areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise on special circumstances only. In such circumstances, the Commission instructs the respondent on the appropriate procedures to follow to safeguard sensitive data. Respondents may request confidential treatment of their documents under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The ARMIS Report 43-04, Access Report, collects the results of the jurisdictional separations and access charge procedures as specified in Parts 36 and 69 of the Commission's Rules. The 43-04 Report specifies information requirements in a

consistent format and is essential to the FCC to monitor revenue requirements, joint cost allocations, jurisdictional separations and access charges. There are no changes to the ARMIS Report 43-04.

Although the Commission has granted conditional forbearance from FCC Reports 43-04, the Commission still seeks OMB approval because petitions for reconsideration and review of those forbearance decisions are currently pending before the Commission and the courts, respectively. On April 24, 2008, the Commission in Petition of AT&T Inc. for Forbearance under 47 U.S.C. 160 from Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (AT&T Cost Assignment Forbearance Order), pet for recon. pending, pet. for review pending, *NASUCA v. FCC*, Case No. 08-1226 (DC Cir. filed June 23, 2008) granted forbearance, subject to conditions, from the statutory provision and Commission rules as requested in the Legacy AT&T and Legacy BellSouth petitions (collectively, "Cost Assignment Rules"). AT&T asked for and the Commission granted forbearance from four of the Commission's reporting requirements—the Access Report (ARMIS 43-04), the Rate of Return Monitoring Report (FCC Form 492), the Reg/Non-Reg Forecast Report (FCC Form 495A) and the Reg/Non-Reg Actual Usage Report (FCC Form 495B)—because forbearance from the Cost Assignment Rules renders these reports meaningless. The Commission had concluded that the various accounting rules were intended to work together to help ensure the primary statutory goal of just and reasonable rates. See Separations of Costs of Regulated Telephone Service from Costs of Nonregulated Activities: Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and their Affiliates, CC Docket 86-111, Report and Order, 2 FCC Rcd 1298 (1987), petition for review denied, *Southwestern Bell Corp v. FCC*, 896 F.2d 1378 (DC Cir. 1990).

In Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket Nos. 08-190, 07-139, 07-204, 07-273, 07-21, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) (Verizon/Qwest Cost Assignment Forbearance Order), pet. for recon. pending, pet. for review pending, *NASUCA v. FCC*, Case No. 08-1353 (DC

Cir. filed Nov. 4, 2008) the Commission extended to Verizon and Qwest forbearance from the statutory provision and Commission rules from the Cost Assignment Rules to the same extend granted AT&T in the AT&T Cost Assignment Forbearance Order and subject to the same conditions. The Commission concluded that there is no current Federal need for the Cost Assignment Rules, as they apply to Verizon and Qwest, to ensure that charges and practices are just, reasonable, and not unjustly discriminatory; to protect consumers; and to ensure the public interest. See AT&T Cost Assignment Forbearance Order, 23 FCC Rcd at 7307, paragraph 11.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011-17562 Filed 7-12-11; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523-5843 or by e-mail at OTI@fmc.gov.

3 Plus Logistics Co. dba Touchdown Freight Co. (NVO & OFF), 20250 S. Alameda Street, Rancho Dominguez, CA 90221. Officers: Kyung S. Kim, Treasurer/CFO (Qualifying Individual), Peter Y.S. Kim, President/CEO/Secretary. Application Type: Trade Name Change.

Amada Shipping Inc. (NVO & OFF), 27522 Via Valor, Capo Beach, CA 92624. Officers: Dana D. Fraser, President/Treasurer (Qualifying Individual), Yuxing Qian, Secretary. Application Type: New NVO & OFF License.

ASO Logistics, Inc. (NVO), 3120 Via Mondo, Rancho Dominguez, CA 90220. Officer: Simon Hwang, President/CEO/Secretary/Treasurer/CFO (Qualifying Individual).

Application Type: New NVO License. Atlas Air Freight System, Inc. dba Kenny International USA (NVO), 222 E. Redondo Beach Boulevard, Suite G, Gardena, CA 90248. Officer: Min Soo (A.K.A. Michael) Shin, President/Sec./Treasurer (Qualifying Individual). Application Type: New NVO License.

BDL Logistics L.L.C. (NVO & OFF), 2387 Indigo Harbour Lane, League City, TX 77573. Officers: Reina G. Loudon, Managing Member (Qualifying Individual), Bradley D. Loudon, Managing Member. Application Type: Name Change/Business Structure Change.

Cardinal Health 200, LLC (NVO & OFF), 7000 Cardinal Place, Dublin, OH 43017. Officers: Warren B. Hastings, Vice President (Qualifying Individual), Stephan A. Inacker, President and GM. Application Type: New NVO & OFF License.

Clover Systems, Inc. dba Clover Marine (NVO & OFF), 1910 NW 97 Avenue, Miami, FL 33018. Officers: Holly A. Olivares, Vice President (Qualifying Individual), Luis A. Rincon, President. Application Type: QI Change.

Convenient Freight System, Inc. (NVO), 690 Knox Street, #220, Torrance, CA 90502. Officers: Kook (A.K.A. Joseph) S. Lee, Vice President (Qualifying Individual), Bum K. Suh, President/Secretary/CFO. Application Type: QI Change.

Euro Cargo Express Inc. dba Pacific Anchor Line Group (NVO), 154-09 146th Avenue, Jamaica, NY 11434. Officers: Barbara Hiebendahl, Secretary (Qualifying Individual), Carlo Paravani, President/CEO. Application Type: QI Change/Trade Name Change.

IMAC International Corp (NVO & OFF), 527 Albert Street, East Meadow, NY 11554. Officers: Ben Leung, Secretary (Qualifying Individual), Eric Tang, President. Application Type: New NVO and OFF License.

Logikor USA, Inc. (NVO & OFF), 3422 Old Capital Trail, #1516, Wilmington, DE 19808-6192. Officers: Rick Morgan, Director (Qualifying Individual), Darryl King, President. Application Type: New NVO & OFF License.

Logistic Network of America LLC (NVO & OFF), 17501 Biscayne Boulevard, Suite 590, Miami, FL 33160. Officers: Diana Y. Orsini, Manager (Qualifying Individual), Arturo Altamirano,

Manager. Application Type: New NVO & OFF License.

LTA Import & Export, Inc. (NVO & OFF), 14331 SW 120th Street, #203, Miami, FL 33186. Officers: Eric E. Diaz, Director of Sales & Marketing (Qualifying Individual), Lester Trimino, Sr., President. Application Type: New NVO & OFF License.

M.E. Dey & Co., Inc. dba Rolland Dey Container Line (NVO & OFF), 700 W. Virginia Street, #300, Milwaukee, WI 53204. Officers: Randall Kupfer, Vice President (Qualifying Individual), Robert L. Gardenier, President. Application Type: Trade Name Change.

Procargo USA, LLC (NVO & OFF), 1609 NW 82nd Avenue, Doral, FL 33126. Officer: Sarisbel Lozano, Manager (Qualifying Individual), Alberto P. Martinez, Manager. Application Type: QI Change.

Puerto Cortes Express, Inc. (NVO), 9930 NW 21st Street, #201, Miami, FL 33172. Officer: Jacqueline Reyes, President (Qualifying Individual). Application Type: New NVO License.

S & B Shipping & Trading Inc. (NVO & OFF), 1271 Ralph Avenue, Brooklyn, NY 11236. Officers: Sebastian T. King, Director/Treasurer/Secretary/VP/COO (Qualifying Individual), Bunny B. Bernard, Director/President/CEO. Application Type: New NVO & OFF License.

Savannah Logistical Services, LLC dba Savannah Logistical Services dba SLS (NVO & OFF), 145 Distribution Drive, Pooler, GA 31322. Officers: Rodney A. Gonzalez, Secretary (Qualifying Individual), James W. Coley, Managing Member/President.

Application Type: New NVO & OFF License.

UniGroup Worldwide Logistics, LLC (OFF), One Premier Drive, Fenton, MO 63026. Officers: Frederick J. Parshley, Vice President (Qualifying Individual), Patrick J. Larch, Jr., Director & President. Application Type: New OFF License.

United Sunfine Logistics, Inc. (NVO), 20277 Valley Boulevard, Suite K, Walnut, CA 91789. Officers: Meiling Chan, CFO/Secretary (Qualifying Individual), Jie Chen, CEO. Application Type: QI Change.

W8 Shipping LLC (OFF), 8 Aviation Court, Savannah, GA 31408. Officers: Darius Ziulpa, Member (Qualifying Individual), Gediminas Garmus, Member/Manager. Application Type: New OFF License.

World Logistics USA, Inc. (OFF), 173 Route 526, Allentown, NJ 08501. Officers: Wladyslaw Kopec, President (Qualifying Individual), Anthony P. Marco, Vice President/Treasurer. Application Type: New OFF License.

Dated: July 8, 2011.

Karen V. Gregory,
Secretary.

[FR Doc. 2011-17629 Filed 7-12-11; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime

Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License Number: 003628NF.

Name: South American Freight International, Inc.

Address: 9000 W. Flagler Street, Unit 5, Miami, FL 33174.

Order Published: FR: 6/2/11 (Volume 76, No. 106, Pg. 31963-31964).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011-17630 Filed 7-12-11; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
003672N	Astral Freight Services, Inc., 1418 NW 82nd Avenue, Doral, FL 33126	May 13, 2011.
022074N	Stream Links Express, Inc. dba E-Freight Solutions, 16328 Avalon Road, Gardena, CA 90248	May 6, 2011.
022540N	Quality One International, Shipping Express, Corp., 3913 Dyre Avenue, Bronx, NY 10466	May 24, 2011.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011-17631 Filed 7-12-11; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission

pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 020313F.

Name: Gateway Logistics, Inc. dba Transgroup International.

Address: 14300 East 35th Place, Suite 105, Aurora, CO 80011.

Date Revoked: May 29, 2011.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011-17627 Filed 7-12-11; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at

the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. Mark Elliott Robson 2007 Trust, Mark Robson, trustee; and Mark Robson, individually, all of Jackson, Wyoming and as members of the Robson Family control group; to retain control of RCB Holding Company, Inc., Claremore, Oklahoma, parent of RCB Bank, Claremore, Oklahoma.

Board of Governors of the Federal Reserve System, July 8, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011-17584 Filed 7-12-11; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Supplemental Funding for the Senior Medicare Patrol (SMP) Program

ACTION: Notice of intent to provide supplemental funding to the existing cooperative agreement (90NP0001) with the Administration on Aging.

SUMMARY: The Administration on Aging is announcing the intent to provide supplemental grant funds for the support of the Senior Medicare Patrol (SMP) program. The goal of this supplemental grant funding is to address the increased need of SMP project grantees for technical assistance and support from the National Consumer Protection Technical Resource Center (the Center). This need has been generated by CMS program expansion grants which have recently doubled the size of the SMP program.

Funding Opportunity Title/Program Name: National Consumer Protection Technical Resource Center

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048 Discretionary Projects.

I. Award Information

A. *Intended Recipient:* Hawkeye Valley Area Agency on Aging, Inc.

B. *Purpose of the Award:*

Supplemental funding to provide expanded support for the SMP program network.

C. *Amount of the Award:* \$178,000.

D. *Project Period:* September 1, 2011–August 31, 2012.

II. Justification for the Exception to Competition

AoA has awarded the National Consumer Protection Technical Resource Center (the Center) a cooperative agreement through the competitive awards process to provide technical assistance, training, and support to the 54 SMP program grantees on a nationwide basis. Through this cooperative agreement, the Center develops the tools, materials, website, expertise, resources and training activities to assist SMP projects in fulfilling their mission of educating seniors to prevent healthcare fraud. Starting in September 2010, the Centers for Medicare and Medicaid Services (CMS) provided additional funding to double the size of the SMP program. The SMP program expansion has resulted in unanticipated additional requirements and needs for technical assistance and support for SMP projects from the Center. In particular the need for enhanced and improved collection of SMP outcomes, including new data elements within the SMART FACTS system, has been generated by SMP expansion. Additional requirements for Center support of the SMP volunteer program have also been generated by the program expansion and capacity building initiative. Expanded funding is expected to greatly increase the SMP projects' requests for technical assistance and support from the Center. Supplemental funding is necessary to ensure the Center can continue to fulfill its technical assistance and support role in a timely and effective manner to meet the increased needs of the expanded SMP program.

III. Agency Contact

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Office of Elder Rights, Washington, DC 20201; telephone: Barbara Dieker (202) 357-0139; e-mail Barbara.Dieker@aoa.hhs.gov.

Dated: July 7, 2011.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2011-17579 Filed 7-12-11; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–09AL]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

Proposed Project

The Green Housing Study—New—National Center for Environmental Health (NCEH) and Agency for Toxic Substances and Disease Registry (ATSDR)/Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This study directly supports the Healthy People 2020 Healthy Homes' health protection goal of the Centers for Disease Control and Prevention (CDC). This investigation is also consistent with CDC's Health Protection Research Agenda, which calls for research to identify the major environmental causes of disease and disability and related risk factors.

The efficacy of green building design features in reducing allergens and toxic substances within the home has been assumed based on conventional wisdom. A better understanding is needed of the extent to which green-built, low-income housing actually reduces exposures to these compounds when compared to standard-built, low-income housing. In addition, this study may provide insight into how specific green building practices (e.g., use of low chemical-emitting paints and carpets) may influence levels of substances in the home such as volatile organic compounds (VOCs). A study investigating these topics would provide a solid foundation upon which to explore green affordable housing's potential to promote healthy homes principles.

The title of this study has changed since publication of the initial 60-day **Federal Register** Notice (FRN) (formally

stated as The Green Housing Study: Environmental Health Impacts on Women and Children in Low-income Multifamily Housing); however, the goals remain the same. These goals will be accomplished in ongoing building renovation programs sponsored by the Department of Housing and Urban Development (HUD). In partnership with HUD, the CDC will leverage opportunities to collect survey and biomarker data from residents and to collect environmental measurements in homes in order to evaluate associations between green housing and health.

Participants will include children with asthma and their mothers/primary caregiver living in HUD-subsidized housing that has either received a green renovation or is a comparison home (i.e., no renovation) from thirteen study sites across the United States. The following are eligible for the study: 1) 832 children (age 7–12 years with asthma and 2) 832 mothers/primary caregivers. Children with asthma (ages

7–12 years) will donate blood samples (for assessment of allergy) and urine samples (for assessment of pesticide and VOC exposures). The children with asthma (ages 7–12 years) will be also tested for lung function and lung inflammatory markers, and nasal and throat swabs samples will be collected to assess for acute respiratory infections. The length of follow-up is one year. Questionnaires regarding home characteristics and respiratory symptoms of the children will be administered at 1- to 6-month intervals.

Environmental sampling of the air and dust in the participants' homes will be conducted over a 1-year period (once in the home before rehabilitation (baseline I), and then at three time points after rehabilitation has been completed: Baseline II, 6 months, and 12 months). Environmental sampling includes measurements of air exchange rate, pesticides, VOCs, indoor allergens, fungi, temperature, humidity, and particulate matter.

To obtain sufficient statistical power, approximately 1000 adults (mothers/primary caregivers) will complete the screening forms. We assume after screening, some will not be eligible (an estimate of roughly 17%). Therefore, we will recruit 832 asthmatic children (age 7–12 years) and their mothers/primary caregivers. In summary, expected overall response rate could range from 69%–86% for the eligible participants in the study from screening through the end of data collection. The number and type of respondents that will complete the questionnaires are 832 mothers/primary caregivers of enrolled children with asthma (ages 7–12 years). All health and environmental exposure information about children will be provided by their mothers/primary caregivers (i.e., no children will fill out questionnaires).

There is no cost to the respondents other than their time to participate in the study. The total estimated annual burden hours equals 2356.

ESTIMATED ANNUALIZED BURDEN HOURS

Forms	Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Screening questionnaire	Mothers/primary caregivers of children with asthma.	1000	1	10/60
Baseline Questionnaire (Home Characteristics).	Mothers/primary caregivers of enrolled children	832	1	15/60
Baseline Part 2 Questionnaire (Home Characteristics).	Mothers/primary caregivers of enrolled children	832	1	10/60
Baseline Questionnaire (Demographics)	Mothers/primary caregivers of enrolled children	832	1	5/60
Baseline Questionnaire (for Children with asthma 7–12 years).	Mothers/primary caregivers of enrolled children	832	1	15/60
Monthly texts	Mothers/primary caregivers of enrolled children	832	8	1/60
3 and 9-month Phone contact	Mothers/primary caregivers of enrolled children	832	2	5/60
6 and 12-month Follow-up Questionnaire (for environment).	Mothers/primary caregivers of enrolled children	832	2	10/60
6 and 12-month Follow-up Questionnaire (for mothers/primary caregivers).	Mothers/primary caregivers of enrolled children	832	2	10/60
6 and 12-month Follow-up Questionnaire (for Children with asthma 7–12 years).	Mothers/primary caregivers of enrolled children	832	2	10/60
Time/Activity form(for Children with asthma 7–12 years).	Mothers/primary caregivers of enrolled children	832	4	5/60
Time/Activity form(for mothers/primary caregivers).	Mothers/primary caregivers of enrolled children	832	4	5/60
Illness/Checklist	Mothers/primary caregivers of enrolled children	832	4	5/60

Catina Conner,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011-17605 Filed 7-12-11; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Intent To Award Affordable Care Act (ACA) Funding, EH10-1003

Notice of Intent to award Affordable Care Act (ACA) funding to National Association for Health Data Organizations (NAHDO) to continue with the existing partnership and

conduct projects for facilitating linkages between health outcome and environmental data. The NAHDO–Tracking collaboration has proven to be an important step in establishing access to existing hospital and emergency department data. This award was proposed in the grantee's Fiscal Year (FY) 2011 non-Competing Continuation application under funding opportunity EH10-1003, "National Environmental Public Health Tracking Program."

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides public announcement of CDC's intent to award Affordable Care Act (ACA) appropriations to the following grantee: National Association for Health Data Organizations (NAHDO) to collaborate with CDC to identify and overcome barriers that limit access to hospital and emergency department data, including identifying and resolving issues of access to secure records. These activities are proposed by the above-mentioned grantee in their FY 2011 application submitted under funding opportunity EH10-1003, "National Environmental Public Health Tracking Program (EPHT)," Catalogue of Federal Domestic Assistance Number (CFDA): 93.070.

Approximately \$124,995.00 in ACA funding will be awarded to the grantee for network expansion and enhancement. Funding is appropriated under the Affordable Care Act (Pub. L. 111-148), Section 4002 [42 U.S.C. 300u-11]; (Prevention and Public Health Fund).

Accordingly, CDC adds the following information to the previously published funding opportunity announcement of EH10-1003:

Authority: Section 317(k)(2) of the Public Health Service Act, [42 U.S.C. Section 247b(k)(2)], as amended, and the Patient Protection and Affordable Care Act (ACA), Section 4002 [42 U.S.C. 300u-11].

CFDA #: 93.538, Affordable Care Act—National Environmental Public Health Tracking Program-Network Implementation

Award Information

Type of Award: Non-Competing Continuation Cooperative Agreement
Approximate Total Current Fiscal Year ACA Funding: \$124,995
Anticipated Number of Awards: 1
Fiscal Year Funds: 2011
Anticipated Award Date: July 1, 2011

Application Selection Process

Funding will be awarded to applicant based on results from successful past performance review.

Funding Authority

CDC will add the ACA Authority to that which is reflected in the published Funding Opportunity CDC-RFA-EH10-1003. The revised funding authority language will read:

—This program is authorized under the Section 317(k)(2) of the Public Health Service Act, [42 U.S.C. Section 247b(k)(2)], as amended, and the

Patient Protection and Affordable Care Act (ACA), Section 4002 [42 U.S.C. 300u-11].

DATES: The effective date for this action is the date of publication of this Notice and remains in effect until the expiration of the project period of the ACA funded applications.

FOR FURTHER INFORMATION CONTACT:

Elmira Benson, Acting Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488-2802, e-mail Elmira.Benson@cdc.gov.

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Affordable Care Act (ACA), Public Law 111-148. The ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and the ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to "provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs." The ACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach Campaign for Preventative Benefits, and Immunization Programs.

The ACA legislation affords an important opportunity to advance public health across the lifespan and to improve public health by supporting the Tracking Network. This network builds on ongoing efforts within the public health and environmental sectors to improve health tracking, hazard monitoring and response capacity. Therefore, increasing funding available to applicants under this FOA using the PPHF will allow them to expand and sustain their existing tracking networks, utilize tracking data available on networks for potential public health assessments which is consistent with the purpose of the PPHF, as stated

above, and to provide for an expanded and sustained national investment in prevention and public health programs. Further, the Secretary allocated funds to CDC, pursuant to the PPHF, for the types of activities this FOA is designed to carry out.

Dated: June 30, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011-17602 Filed 7-12-11; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Intent To Award Affordable Care Act (ACA) Funding, EH11-1103

Notice of Intent to award Affordable Care Act (ACA) funding to seventeen states and local health departments to develop and implement tracking networks within their funded jurisdictions that are part of the National Tracking Network. These awards were proposed in the grantees' Fiscal Year (FY) 2011 Competing Continuation applications under funding opportunity EH11-1103, "National Environmental Public Health Tracking Program-Network Implementation."

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides public announcement of CDC's intent to award Affordable Care Act (ACA) appropriations to the following 17 grantees: California, Connecticut, Florida, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, New York City, New York State, Oregon, Pennsylvania, Utah, Washington, and Wisconsin to develop and implement their Tracking Networks. These activities are proposed by the above-mentioned grantees in their FY 2011 applications submitted under funding opportunity EH11-1103, "National Environmental Public Health Tracking Program-Network Implementation (EPHT)," Catalogue of Federal Domestic Assistance Number (CFDA): 93.070.

Approximately \$16,500,000 in ACA funding will be awarded to the grantees for network expansion and enhancement. Funding is appropriated under the Affordable Care Act (Pub. L. 111-148), Section 4002 [42 U.S.C.

300u–11]; (Prevention and Public Health Fund).

Accordingly, CDC adds the following information to the previously published funding opportunity announcement of EH11–1103:

Authority: Section 317(k)(2) of the Public Health Service Act, [42 U.S.C. Section 247b(k)(2)], as amended, and the Patient Protection and Affordable Care Act (ACA), Section 4002 [42 U.S.C. 300u–11].

—CFDA #: 93.538 Affordable Care Act—National Environmental Public Health Tracking Program-Network Implementation

Award Information

Type of Award: New Competing Continuation Cooperative Agreement.
Approximate Total Current Fiscal Year ACA Funding: \$16,500,000.
Anticipated Number of Awards: 17.
Fiscal Year Funds: 2011.
Anticipated Award Date: August 1, 2011.

Application Selection Process

Funding will be awarded to applicants based on results from the objective review panel ranking recommendation.

Funding Authority

CDC will add the ACA Authority to that which is reflected in the published Funding Opportunity CDC–RFA–EH11–1103. The revised funding authority language will read:

—This program is authorized under Section 317(k)(2) of the Public Health Service Act, [42 U.S.C. 247b], as amended, and the Patient Protection and Affordable Care Act (ACA), Section 4002 [42 U.S.C. 300u–11].

DATES: The effective date for this action is the date of publication of this Notice and remains in effect until the expiration of the project period of the ACA funded applications.

FOR FURTHER INFORMATION CONTACT:

Elmira Benson, Acting Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2802, e-mail Elmira.Benson@cdc.gov.

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Affordable Care Act (ACA), Public Law 111–148. The ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and the ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002

that the PPHF is to “provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs.” The ACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach Campaign for Preventative Benefits, and Immunization Programs.

The ACA legislation affords an important opportunity to advance public health across the lifespan and to improve public health by supporting the Tracking Network. This network builds on ongoing efforts within the public health and environmental sectors to improve health tracking, hazard monitoring and response capacity. Therefore, increasing funding available to applicants under this FOA using the PPHF will allow them to expand and sustain their existing tracking networks, utilize tracking data available on networks for potential public health assessments which is consistent with the purpose of the PPHF, as stated above, and to provide for an expanded and sustained national investment in prevention and public health programs. Further, the Secretary allocated funds to CDC, pursuant to the PPHF, for the types of activities this FOA is designed to carry out.

Dated: June 30, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–17603 Filed 7–12–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Intent To Award Affordable Care Act (ACA) Funding, EH10–1004

Notice of Intent to award Affordable Care Act (ACA) funding to National Association for Public Health Statistics and Information Systems (NAPHSIS) to

continue with the existing partnership. NAPHSIS and its membership (state vital records registrars) will work with CDC to promote collaboration among vital records, health statistics, and health information systems professionals in providing environmental and health data information to policy makers. This award was proposed in the grantee’s Fiscal Year (FY) 2011 non-Competing Continuation application under funding opportunity EH10–1004, “National Environmental Public Health Tracking Program.”

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides public announcement of CDC’s intent to award Affordable Care Act (ACA) appropriations to the following grantee: National Association for Public Health Statistics and Information Systems (NAPHSIS) to collaborate with CDC to identify and overcome barriers that limit access to work with CDC, states and local grantees to develop electronic vital records reporting systems to ensure Public Health Information Network–(PHIN) compatibility that would promote data interoperability across public health systems. These activities are proposed by the above mentioned grantee in their FY 2011 application submitted under funding opportunity EH10–1004, “National Environmental Public Health Tracking Program (EPHT),” Catalogue of Federal Domestic Assistance Number (CFDA): 93.070. Approximately \$125,000.00 in ACA funding will be awarded to the grantee for network expansion and enhancement. Funding is appropriated under the Affordable Care Act (Pub. L. 111–148), Section 4002 [42 U.S.C. 300u–11]; (Prevention and Public Health Fund).

Accordingly, CDC adds the following information to the previously published funding opportunity announcement of EH10–1004:

Authority: Sections 311 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 243 and 247b(k)(2)] as amended and the Patient Protection and Affordable Care Act (ACA), Section 4002 [42 U.S.C. 300u–11]. CFDA #: 93.538, Affordable Care Act—National Environmental Public Health Tracking Program-Network Implementation.

Award Information

Type of Award: Non-Competing Continuation Cooperative Agreement.
Approximate Total Current Fiscal Year ACA Funding: \$125,000.
Anticipated Number of Awards: 1.

Fiscal Year Funds: 2011.

Anticipated Award Date: July 1, 2011.

Application Selection Process

Funding will be awarded to applicant based on results from successful past performance review.

Funding Authority

CDC will add the ACA Authority to that which is reflected in the published Funding Opportunity CDC-RFA-EH10-1004. The revised funding authority language will read:

—This program is authorized under Sections 311 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 243 and 247b(k)(2)] as amended and the Patient Protection and Affordable Care Act (ACA), Section 4002 [42 U.S.C. 300u-11].

DATES: The effective date for this action is the date of publication of this Notice and remains in effect until the expiration of the project period of the ACA funded applications.

FOR FURTHER INFORMATION CONTACT:

Elmira Benson, Acting Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488-2802, e-mail Elmira.Benson@cdc.gov.

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Affordable Care Act (ACA), Public Law 111-148. ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to “provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs.” ACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach

Campaign for Preventative Benefits, and Immunization Programs.

ACA legislation affords an important opportunity to advance public health across the lifespan and to improve public health by supporting the Tracking Network. This network builds on ongoing efforts within the public health and environmental sectors to improve health tracking, hazard monitoring and response capacity. Therefore, increasing funding available to applicants under this FOA using the PPHF will allow them to expand and sustain their existing tracking networks, utilize tracking data available on networks for potential public health assessments which is consistent with the purpose of the PPHF, as stated above, and to provide for an expanded and sustained national investment in prevention and public health programs. Further, the Secretary allocated funds to CDC, pursuant to the PPHF, for the types of activities this FOA is designed to carry out.

Dated: June 17, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011-17601 Filed 7-12-11; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2010-N-0120]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Cosmetic Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled “Cosmetic Labeling Regulations” has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT:

Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3793.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of May 28, 2010 (75 FR 30035), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An

Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0599. The approval expires on June 13, 2014. A copy of the supporting statement for this information collection is available on the Internet at <http://www.reginfo.gov/public/do/PRAMain>.

Dated: July 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-17570 Filed 7-12-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0509]

Agency Information Collection Activities; Proposed Collection; Comment Request; Appeals of Science-Based Decisions Above the Division Level at the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements for appeals of science-based decisions above the division level at the Center for Veterinary Medicine (CVM).

DATES: Submit either electronic or written comments on the collection of information by September 12, 2011.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.fda.gov/dockets/ecomments> or <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the

docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-7651, Juanmanuel.vilela@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice

of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Appeals of Science-Based Decisions Above the Division Level at CVM—21 CFR Part 10.75 (OMB Control Number 0910-0566—Extension)

Respondents: Respondents to this collection of information are applicants that wish to submit a request for review of a scientific dispute.

CVM's Guidance for Industry #79—"Dispute Resolution Procedures for Science-based Decisions on Products Regulated by the Center for Veterinary Medicine" describes the process by which CVM formally resolves disputes relating to scientific controversies. A scientific controversy involves issues concerning a specific product regulated by CVM related to matters of technical expertise and requires specialized education, training, or experience to be understood and resolved. Further, the guidance details information on how the Agency intends to interpret and apply provisions of the existing regulations regarding internal Agency review of decisions. In addition, the guidance outlines the established procedures for persons who are sponsors, applicants, or manufacturers, for animal drugs or other products regulated by CVM, who wish to submit a request for review of a scientific dispute. When a sponsor, applicant, or manufacturer has a scientific disagreement with a written decision by CVM, they may submit a request for a review of that decision by following the established Agency channels of supervision for review.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
10.75	1	3	3	10	30

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimated annual reporting burden is based on CVM's experience over the past 3 years in handling formal appeals for scientific disputes. The number of respondents multiplied by the number of responses per respondent equals the total annual responses. The average burden per response (in hours) is based on discussions with industry and may vary depending on the complexity of the issue(s) involved and the duration of the appeal process.

Dated: July 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-17532 Filed 7-12-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2010-N-0567]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Restaurant Menu and Vending Machine Labeling; Recordkeeping and Mandatory Third Party Disclosure Under Section 4205 of the Patient Protection and Affordable Care Act of 2010

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Restaurant Menu and Vending Machine Labeling; Recordkeeping and Mandatory Third Party Disclosure

Under Section 4205 of the Patient Protection and Affordable Care Act of 2010" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3793.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 31, 2011 (76 FR 5380), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0665. The

approval expires on June 13, 2014. A copy of the supporting statement for this information collection is available on the Internet at <http://www.reginfo.gov/public/do/PRAMain>.

Dated: July 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-17571 Filed 7-12-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0012]

Critical Path Manufacturing Sector Research Initiative (U01)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of a cooperative agreement with the National Institute for Pharmaceutical Technology and Education Initiative (NIPTE).

Development of the Critical Path Manufacturing Sector Initiative has focused attention on the continuing need for this kind of research in a way that can improve reliability of pharmaceutical product manufacturing and quality across the entire industry. This shared knowledge will increase the likelihood of successfully manufacturing products that have been identified in the clinical development community. The goal of this agreement is to improve the overall manufacturing and quality and the knowledge base.

DATES: Important dates are as follows:

1. The application due date is July 20, 2011.
2. The anticipated start date is August 31, 2011.
3. The opening date is July 13, 2011.
4. The expiration date is July 22, 2011.

For Further Information and Additional Requirements Contact:

For Programmatic and Scientific Questions and Concerns contact:

Jon Clark, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4178, Silver Spring, MD 20993, 301-796-2400; E-mail: Jon.Clark@fda.hhs.gov.

For Administrative and Financial Questions and Concerns contact: Gladys Melendez, Office of Acquisitions and Grant Support, Food and Drug

Administration, 5630 Fishers Lane, rm. 1078, Rockville, MD 20857, 301-827-7175; E-mail: gmb@fda.hhs.gov.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at <http://www.fda.gov/AboutFDA/CentersOffices/CDER/ucm088761.htm> under the "Regulatory Information" section. The title of the page is "Research Acquisitions."

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Funding Opportunity Number: RFA-FD-11-014.

Catalog of Federal Domestic Assistance: 93.103.

A. Background

The Office of Pharmaceutical Science has conducted research within the academic community through contracts in order to improve the overall manufacturing and quality knowledge base. This research is important to the public sector, because research conducted in pharmaceutical sciences related to product quality is typically kept proprietary.

Development of the Critical Path Manufacturing Sector Initiative has focused attention on the continuing need for this kind of research in a way that can improve reliability of pharmaceutical product manufacturing and quality across the entire industry. This shared knowledge will increase the likelihood of successful manufacturing.

B. Research Objectives

The grant will support programs and research as described in the following paragraphs, related to the manufacturing of drugs, biological products, and medical devices:

- Education and training in the field of manufacturing and scale-up, for product development partnerships, academic scientists, other product developers and product application reviewers.
- Development of platform strategies and standardized approaches for medical product manufacturing to shorten timelines for manufacturers to produce quality medical products at commercial scale. This will provide publicly available models for manufacturing and scale-up that will help enable small firms to expeditiously market important treatments.
- Development of analytical methodologies and advanced computational methodologies to better characterize complex molecules and complex mixtures of molecules is needed to better understand and control

manufacturing processes and product quality. Specific analytical techniques will better enable standardized approaches to manufacturing control and advance computational technologies will help to identify atypical samples of complex molecules. These advances will help assure pharmaceutical quality for the American public.

- Research into improved techniques for collection and analysis of process data to control processes and to ensure that they are in statistical control will be done. This includes science-based flexible and adaptive approaches to manufacturing utilizing feed forward and feed backward information flow. Standardized approaches to assuring product quality using manufacturing and analytical data will support continued product quality and lessen manufacturing failures thus decreasing shortages of medically necessary products.

- Development of techniques for assuring product quality using surrogates for desired clinical results will improve understanding of quality target product profile. This approach takes advantage of the potential to use existing clinical data to determine clinically relevant specifications including unit-to-unit variability, drug dissolution, and other material or product attributes, and to support future manufacturing improvements while maintaining product quality.

- Creating simulation models for manufacturing techniques including but not limited to biotech fermentation and cell culture, small molecule crystallization, freeze drying techniques, and precision tablet coating will enhance industry knowledge. These models will enable a more predictable approach to manufacturing development and design of control systems. This predictability will shorten the critical path pipeline from laboratory to clinic and support continual improvement to achieve product quality of the drug's lifecycle.

- Creating simulation models for complex drug delivery devices such as dry product inhalers, transdermal patches, and liposomal products to better understand the product design and performance and to control the critical manufacturing parameters. These models will aid to speed the development of novel dosage forms and decrease the failure rates of these products.

- Research into product formulation for special patient populations or product formulation to ensure chemical stability of active ingredients will shorten formulation development and

thus, the critical path pipeline. This research does not require clinical or animal studies. Instead, it will lead to the creation of materials with physical properties in materials that have been previously identified as being desirable.

- Physical characteristics of active ingredients and recipients in drug products, such as crystal morphology, co-crystal technology, dispersions, and particle sizing including nanotechnology are not fully developed in the public sector. This work will develop technology enabling control of these attributes. This will provide another dimension of control to the predictability of pharmaceutical products. This added control will enable new approaches to manufacturing novel dosage forms and shorten the time it takes to develop manufacturing processes and controls.

- Development of specialized manufacturing techniques suitable for products administered in low dosages and for products with high toxicity or narrow therapeutic ranges. This will enable more rapid development of manufacturing techniques for these products.

- Development of models for manufacturing and engineering of device products such as infusion pumps, prosthetic organs, defibrillators, tissue engineering devices, and combination products will help standardize the approach for bringing these medical products to market. This includes development of components for more reliable delivery of pharmaceuticals to the most desirable site of action, for example, controlling the air plume of inhaled products. This will shorten the time required to move such products from concept to patient and thereby shorten the Industrialization sector of the Critical Path.

- Research into methods for laboratory synthesis of molecules that have been designed by computer simulation will shorten medical product development time. These methods will make the creation of these molecules more predictable. These technologies will also enable new drug discoveries to be brought to market faster with less variability; higher predictability of performance.

- Approaches to improve facilities where this research will be conducted. Advanced technology development can be accelerated by better design of the facilities where this research is conducted. Creating and making these designs public will have the effect of accelerating technology across the industry. This will shorten the time it takes to bring these advanced

technologies into the product manufacturing sector.

C. Eligibility Information

National Institute for Pharmaceutical Technology and Education Initiative (NIPTE), a Nonprofit Other Than Institutions of Higher Education, described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)), which is exempt from tax under section 501(a) of that code.

NIPTE is the only consortium of universities of its kind. The organization consists of many of the most highly qualified pharmaceutical manufacturing experts in academia. Research conducted by NIPTE Faculty is collaborative by design to provide for coordinated publication of the cutting-edge research results.

An eligible organization that wishes to enter into a collaborative agreement must provide an assurance that the entity will not accept funding for a Critical Path Public-Private Partnership Project from any organization that manufactures or distributes products regulated by FDA unless the entity provides assurance in its agreement with FDA that the results of the Critical Path Public Partnership project will not be influenced by any source of funding. The entities eligible to enter into partnerships with FDA are governed by section 566 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb5).

This cooperative agreement will provide continued support for established and previously funded collaborations on behalf of FDA priorities.

II. Award Information/Funds Available

A. Award Amount

Only one grant will be awarded. In fiscal year 2011, there is currently \$700,000 available. As funds are available, partner components may supplement up to \$7,000,000 total cost per year, depending on the availability of fiscal year funds.

B. Length of Support

Application budgets are not limited, but need to reflect actual needs of the proposed project. This Cooperative Agreement is capable of awarding a total of \$35,000,000 over the entire award project period depending upon progress, the need for, and the availability of fiscal year funds.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at <http://www.fda.gov/About>

[FDA/CentersOffices/CDER/ucm088761.htm](http://www.fda.gov/CentersOffices/CDER/ucm088761.htm) located under the "Regulatory Information" section. The title of the page is "Research Acquisitions."

Persons interested in applying for a grant may obtain an application at <http://grants.nih.gov/grants/forms.htm>. For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number.
- Step 2: Register With Central Contractor Registration.
- Step 3: Register With Electronic Research Administration (eRA) Commons.

Steps 1 and 2, in detail, can be found at: http://www07.grants.gov/applicants/organization_registration.jsp. Step 3, in detail, can be found at <https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp>. After you have followed these steps, submit paper applications to Gladys Melendez, Grants Management Officer/ Grants Management Specialist (see *For Further Information and Additional Requirements Contact*).

Dated: July 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-17515 Filed 7-12-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0005]

Memorandum of Understanding Between the Food and Drug Administration and MEDSCAPE, LLC and WEBMD LLC

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and MEDSCAPE, LLC AND WEBMD LLC. The purpose of the MOU is to complement FDA's capacity to educate and communicate with health care professionals. It will also promote the timely dissemination to health care professionals of accurate information on public health and emerging safety issues and products safety recalls.

DATES: The agreement became effective June 8, 2011.

FOR FURTHER INFORMATION CONTACT:

Anna Fine, Office of Special Health Issues, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5337, Silver Spring, MD 20993–0002, 301–796–8471, e-mail: Anna.Wojas@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal**

Register, the Agency is publishing notice of this MOU.

Dated: July 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

BILLING CODE 4160–01–P

MEMORANDUM OF UNDERSTANDING
BETWEEN
U.S. FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
MEDSCAPE, LLC AND WEBMD LLC (each a “Party” and collectively the “Parties”)

I. Purpose

This Memorandum of Understanding (MOU) defines the framework in which the Food and Drug Administration (FDA) will provide publicly available content to be used in health professional informational, educational, and training programs that will be run by WebMD LLC (“WebMD”) and Medscape, LLC (“Medscape”), an entity accredited by the Accreditation Council for Continuing Medical Education (ACCME), the American Nurses Credentialing Center (ANCC) and the Accreditation Council for Pharmacy Education (ACPE) to provide continuing professional education to physicians, nurses and pharmacists, respectively. These programs will provide information, education and training for physicians, nurses, pharmacists, and health professionals (collectively referred to herein as “HCP’s”) on medical product safety and efficacy issues and, in certain cases, will offer HCP’s the opportunity to obtain continuing medical education (physicians) and continuing education (nursing, pharmacy) credit (collectively, “CME”) in connection with such programs. This collaboration will complement FDA’s capacity to educate and communicate with HCP’s. It will also promote the timely dissemination to HCP’s of accurate information on public health and emerging safety issues and product safety recalls.

II. Background

The FDA is responsible for protecting the public health by assuring that foods are safe, wholesome, sanitary, and properly labeled; biologics for human use and human and veterinary drugs are safe and effective; there is reasonable assurance of the safety and effectiveness of medical devices intended for human use; cosmetics are safe and properly labeled; public health and safety are protected from electronic product radiation; and tobacco products are labeled and marketed in accordance with applicable statutes and regulations.

The FDA is also responsible for advancing the public health. FDA helps to speed innovations that make medicines and medical devices more effective, safer, and more affordable; and helps the public get the accurate, science-based information they need to use FDA-regulated products to improve their health (“FDA Health Information”).

Through their respective online portals and mobile applications (collectively, the “WebMD Health Professional Network”), Medscape and WebMD offer HCP’s a

variety of information resources and communications services including, but not limited to, peer-reviewed original medical journal articles, CME, a customized version of the National Library of Medicine's MEDLINE database, daily medical news, major conference coverage, and drug information—including a drug database (Medscape Drug Reference, or MDR) and drug interaction checker and Medscape Physician Connect, a physician-only social network.

III. Authority

FDA has authority to provide information to the public pursuant to section 705(b) and section 903(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 375(b) and 393(d)(2)(D).

IV. Substance of Understanding

FDA will work with Medscape and WebMD, as applicable depending on the nature of the services being developed, to define approaches for web links, the delivery and sharing of content, and CME program assessment, development and delivery protocols in order to facilitate the dissemination of FDA Health Information. As part of this effort, FDA and Medscape will identify FDA public health and product alerts, guidance, service descriptions and educational programs for HCP's.

V. General Provisions

- A. This MOU does not grant exclusivity to either Party, nor does it restrict FDA, Medscape or WebMD from participating in similar initiatives with other public or private agencies, organizations or individuals.
- B. FDA Health Information must be easily distinguishable from non-FDA content on Medscape and WebMD web pages. FDA Health Information placed on Medscape and WebMD web pages should be clearly identified as such.
- C. Printed and online web pages containing FDA Health Information provided by FDA pursuant to this MOU must be free of advertisements, and otherwise must avoid implying FDA's endorsement or support for a particular product, service or website.
- D. FDA, Medscape and WebMD recognize that this MOU is not intended to, and may not be relied on to create any right or benefit, substantive or procedural, enforceable by law by any party against the United States, Medscape or WebMD.
- E. All materials and programming produced pursuant to this collaboration must be accessible by and free of cost to the general public.

- F. All activities within the scope of this MOU must comply with section 508 of the Rehabilitation Act (29 U.S.C. § 794d), as amended by the Workforce Investment Act of 1998, Pub. L. No. 105-220, Aug. 7, 1998 (see U.S. Department of Health and Human Services policy on section 508 compliance at <http://www.hhs.gov/od/508policy/index/html>; and Office of Management and Budget policies for protecting private information at www.usa.gov/webcontent/reqs_bestpractices/laws_regs/privacy/shtml).
- G. Both parties agree that content provided to Medscape or WebMD by FDA in connection with the collaboration shall be public domain material and as such, FDA shall have full rights to reuse such content for all FDA purposes and the right to share with other collaborators or requestors.
- H. Medscape and WebMD agree to maintain current FDA Health Information within their web pages. FDA Health Information must be removed from Medscape and WebMD websites in the following circumstances: (1) within three years of the date of its first publication, unless an extension of a definite term is agreed to by FDA in advance of expiration of the three-year period; (2) upon termination of this MOU, if the MOU terminates less than three years after the material is posted; (3) upon FDA's request in circumstances in which the information becomes outdated; or (4) as soon as is commercially practicable but no longer than 72 hours after receipt of FDA's written request to remove the material, regardless of reason. Medscape or WebMD's failure to display current information or to remove information in accordance with this MOU may result in termination of this MOU and related activities.
- I. FDA retains the right to review all materials produced through this collaboration prior to WebMD's or Medscape's public distribution or posting of such materials, and the right to prohibit the public distribution or posting of such materials.
- J. Medscape and WebMD will include the following disclaimer language in a clearly distinguishable manner on any web pages on which FDA Health Information provided by FDA pursuant to this MOU is placed: "Information provided by FDA and/or its employees on this website is for educational purposes only, and does not constitute medical advice. Any statement or advice given by an FDA employee on this website does not represent the formal position of FDA. FDA and/or any FDA employee will not be liable for injury or other damages resulting to any individuals who view FDA-related materials on this website." FDA reserves the right to modify this disclaimer language.
- K. FDA and Medscape and WebMD will cooperate in the maintenance of each party's trademarks and logos. Medscape and WebMD agree that they will not use FDA's logo for marketing purposes other than to promote activities

engaged in pursuant to this agreement. The use of FDA names and logos shall not imply any exclusive arrangement. Any use of FDA logos must be approved, in advance, by FDA's Office of Special Health Issues and adhere to published FDA logo policies (see <http://www.fda.gov/AboutFDA/AboutThisWebsite/WebsitePolicies/ucm218116.htm>).

- L. This MOU does not and is not intended to transfer to any Party any rights in any technology or intellectual property of any other Party hereto, other than Medscape's ability to display the FDA logo subject to the restrictions specified under Paragraph J above. For avoidance of doubt, any intellectual property including, without limitation, content, products, technology, data and other information, provided by Medscape or WebMD for use in the collaboration shall in all cases remain solely owned by Medscape or WebMD, as applicable, and no license to use such information is granted under this MOU.
- M. FDA and Medscape and/or WebMD may in the future engage in activities relating to certain funded activities. Those activities are entirely independent of this MOU and shall in no respect be subject to any term of this MOU.
- N. Except as required by law or regulation, including but not limited to publication of this MOU and related materials in the Federal Register, neither party will make any public announcement (including press releases) about this MOU or the subject matter thereof without first obtaining the other party's prior written approval of such announcement.

VI. Resource Obligations:

All activities undertaken pursuant to the MOU are subject to the availability of personnel, resources, and funds. Medscape and WebMD are not being compensated by FDA for the activities conducted under the MOU, and funds are not otherwise being obligated under the MOU. This MOU does not affect or supersede any existing or future agreements or arrangements among the Parties. This MOU and all associated agreements will be subject to the applicable policies, rules, regulations, and statutes under which FDA, Medscape and WebMD operate.

VII. CONTACT POINTS

A. Food and Drug Administration

Anna Fine
Office of Special Health Issues
Office of External Affairs
U.S. Food and Drug Administration
301-796-8471
Anna.wojas@fda.hhs.gov

B. Medscape, LLC or WebMD LLC

Amy Nadel
825 Eighth Avenue, 11th Floor
New York, NY 10019
212-301-6727
anadel@medscape.net

VIII. LIMITATIONS ON LIABILITY

In no event will any party hereto be liable to the other under any theory of liability, however arising, for any costs or cover or for indirect, special, incidental, or consequential damages of any kind arising out of this MOU. The provision shall survive termination, cancellation or expiration of this MOU or any reason whatsoever.

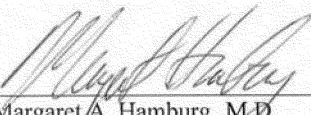
IX. Term, Termination, and Modification:

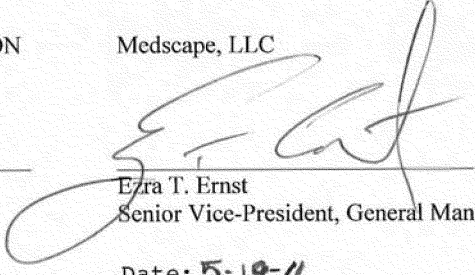
This MOU, when accepted by all Parties, will have an effective period of performance from the date of the latest signature until three years and may be modified or terminated by mutual written consent by both Parties. Any party may terminate the agreement at any time, but such Party should provide 60-day advance written notice to the other Parties of such termination.

By signing below, the Parties accept the conditions that accurately represent the understanding reached between them.

FOOD AND DRUG ADMINISTRATION

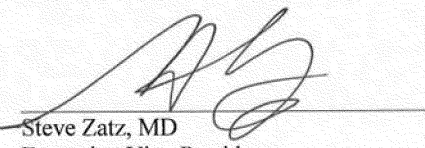
Medscape, LLC


Margaret A. Hamburg, M.D.
Commissioner of Food and Drugs


Ezra T. Ernst
Senior Vice-President, General Manager

Date: 6/8/11Date: 5-19-11

WebMD LLC


Steve Zatz, MD
Executive Vice-President
WebMD Health Corp.

Date: 05/19/11

[FR Doc. 2011-17565 Filed 7-12-11; 8:45 am]

BILLING CODE 4160-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of General Medical Sciences; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, K99 Pathway to Independence Grant Applications Review.

Date: August 2, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: John J. Laffan, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18J, Bethesda, MD

20892, 301-594-2773,
laffanjo@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 7, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-17611 Filed 7-12-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

Date: August 4–5, 2011.

Time: 8 a.m. to 12:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gail J Bryant, MD, Medical Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8107, MSC 8328, BETHESDA, MD 20892-8328, (301) 402-0801, gb30t@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-17608 Filed 7-12-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NEXT Data Coordinating Centers.

Date: August 5, 2011.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-594-0635, Rc218u@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-17606 Filed 7-12-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2011-0025]

National Emergency Communications Plan (NECP) Tribal Report

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-Day notice and request for comments; New Information Collection Request: 1670-NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), Office of Emergency Communications (OEC), will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning New Information Collection Request, National Emergency Communications Plan Tribal Report. DHS previously published this ICR in the **Federal Register** on April 20, 2011, at 76 FR 22114, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 12, 2011. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties. Comments must be identified by "DHS-2011-0025" and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

- *E-mail:*

oir_submission@omb.eop.gov. Include the docket number in the subject line of the message.

- *Fax:* (202) 395-5806.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: OEC, formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, is required to develop the NECP, which will include identification of goals, timeframes, and appropriate measures to achieve interoperable communications capabilities. The NECP Tribal Report is designed to meet these statutory requirements.

OEC will use the information gained through the reports to track progress that tribes are making in implementing milestones and demonstrating goals of the NECP. The report will provide OEC with broader capability data across the lanes of the Interoperability Continuum, which are key indicators of consistent success in response-level communications.

Tribes with public safety capabilities (police, fire, emergency medical services, emergency managers, dispatchers, radio operators, government workers, etc.) will be responsible for collecting this information from their respective tribes. Tribal points of contact will complete and submit the report directly to OEC through paper mailing at DHS/NPPD/CS&C/OEC, Ryan Oremland, 245 Murray Lane, SW., Mailstop 0614, Washington, DC 20528-0614 or unclassified electronic submission to NECPgoals@hq.dhs.gov.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: National Emergency Communications Plan Tribal Report.
OMB Number: 1670-NEW.

Frequency: Annually.

Affected Public: Tribal Governments.

Number of Respondents: 250 respondents.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 125 annual burden hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$3,052.50.

Dated: June 29, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011-17545 Filed 7-12-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2011-0023]

Committee Name: Homeland Security Science and Technology Advisory Committee (HSSTAC)

ACTION: Committee Management; Notice of Federal advisory committee charter renewal.

SUMMARY: The Secretary of Homeland Security has determined that the renewal of the charter of the Homeland Security Science and Technology Advisory Committee (HSSTAC) is necessary and in the public interest in connection with the Department of Homeland Security, Science and Technology Directorate's performance of its duties. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Homeland Security Science and Technology Advisory Committee (HSSTAC).

ADDRESSES: If you desire to submit comments on this action, they must be submitted by August 24, 2011. Comments must be identified by (DHS-2011-0023) and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** mary.hanson@dhs.gov. Include the docket number in the subject line of the message.

- **Fax:** 202-253-5823.

- **Mail:** Mary Hanson, HSSTAC Executive Director, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528.

- **Instructions:** All submissions received must include the words "Department of Homeland Security" and DHS-2011-0023, the docket number for this action. Comments

received will be posted without alteration at <http://www.regulations.gov> including any personal information provided.

- **Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Mary Hanson, HSSTAC Executive Director, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528, 202-254-5866 (O) 202-254-5823 (F), mary.hanson@dhs.gov.

Purpose and Objective: The committee addresses areas of interest and importance to the Under Secretary for Science and Technology, such as new developments in systems engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other federal agencies and by the private sector. The committee also advises the Under Secretary on policies, management processes, and organizational constructs as needed. Upon request, the committee provides scientifically- and technically-based advice to the Homeland Security Advisory Council.

Duration: The committee's charter is effective June 21, 2011 and expires June 21, 2013.

Responsible DHS Officials: Mary Hanson, HSSTAC Executive Director, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528, 202-254-5866 (O) 202-254-5823 (F), mary.hanson@dhs.gov.

Dated: July 5, 2011.

Tara O'Toole,

Under Secretary for Science and Technology.

[FR Doc. 2011-17547 Filed 7-12-11; 8:45 am]

BILLING CODE 4410-9F-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2011-0044]

Privacy Act of 1974; Department of Homeland Security/ALL-033 Reasonable Accommodations Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to

establish a new system of records titled, "Department of Homeland Security/ALL-033 Reasonable Accommodations Records System of Records." This system will allow the Department to collect and maintain records on applicants for employment as well as employees with disabilities who requested or received reasonable accommodations by the Department as required by the Rehabilitation Act of 1973 and the Americans with Disabilities Act Amendments of 2008. Reasonable accommodations provide modifications or adjustments to: (1) The job application process that enables a qualified applicant or individual with a disability to enjoy equal employment opportunities available to persons without a disability; (2) the work environment; and/or (3) the manner in which a position is customarily performed. This system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before August 12, 2011. This new system will be effective August 12, 2011.

ADDRESSES: You may submit comments, identified by docket number [DHS-2011-0044] by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 703-483-2999.

- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

- *Docket:* For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Reasonable Accommodations Coordinator (202-254-8200), Office for Civil Rights and Civil Liberties, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of

Homeland Security (DHS) proposes to establish a new system of records titled, "DHS/ALL-033 Reasonable Accommodations Records System of Records."

This system will allow the Department to collect and maintain records on applicants for employment as well as employees with disabilities who requested or received reasonable accommodations by the Department as required by the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) Amendments of 2008. Reasonable accommodations provide modifications or adjustments to: (1) The job application process that enables a qualified applicant or individual with a disability to enjoy equal employment opportunities available to persons without a disability; (2) the work environment; and/or (3) the manner in which a position is customarily performed.

Sections 501, 504, and 701 of the Rehabilitation Act of 1973 and the ADA Amendments of 2008 require federal agencies to provide reasonable accommodation to qualified applicants for employment and employees with disabilities if known or requested, unless the accommodation would impose an undue hardship. The purpose of reasonable accommodations is to provide modifications or adjustments to: (1) The job application process that enables a qualified applicant or individual with a disability to enjoy equal employment opportunities available to persons without a disability; (2) the work environment; and/or (3) the manner in which a position is customarily performed. Reasonable accommodations may include, but are not limited to: (1) Making existing facilities readily accessible to and usable by individuals with disabilities; (2) job restructuring, modification of work schedules or place of work, extended leave, telecommuting, or reassignment to a vacant position; and/or (3) acquisition or modification of equipment or devices, including computer software and hardware, appropriate adjustments or modifications of examinations, training materials or policies, the provision of qualified readers and/or interpreters, personal assistants, service animals, and other similar accommodations.

The purpose of this system is to allow the Department to collect and maintain records on applicants for employment as well as employees with disabilities who requested or received reasonable accommodations by the Department as required by the Rehabilitation Act of 1973 and the ADA Amendments of 2008. The purpose of this system is also

to track processing of requests for reasonable accommodation Department-wide to comply with applicable law and regulations and to preserve and maintain the confidentiality of medical information. DHS is authorized to implement this reasonable accommodation program primarily through Sections 501, 504, and 701 of the Rehabilitation Act of 1973 and the ADA Amendments Act of 2008. This system has an effect on individual privacy that is balanced by the need to collect and maintain information on applicants and employees with disabilities requiring reasonable accommodations. Routine uses contained in this notice include sharing information with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to agencies, organizations, or individuals for the purpose of audit; to agencies, entities, or persons during a security or information compromise or breach; to an agency, organization, or individual when there could potentially be a risk of harm to an individual; to an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order; to other Federal agencies when seeking advice or assistance on issues related to reasonable accommodations; to third parties contracted by the Department to facilitate mediation or other dispute resolution procedures or programs; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act (PRA). This system will be included in the DHS inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the

individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ALL-033 Reasonable Accommodations Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to OMB and to Congress.

System of Records

Department of Homeland Security (DHS)/ALL-033

SYSTEM NAME:

DHS/ALL-033 Reasonable Accommodations Records System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at DHS and component locations in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include applicants for employment and employees who request or receive reasonable accommodations under Sections 501, 504, and 701 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) Amendments of 2008. This also includes authorized individuals or representatives (*e.g.*, family member or attorney) who file requests for reasonable accommodation on behalf of an applicant for employment or employee as well as former employees who requested or received reasonable accommodation

during their employment with the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Requester's name;
- Requester's status (applicant or current employee);
- Requester's contact information (work address, phone, and e-mail);
- Date request was initiated;
- Jobs (occupational series, grade level, and agency component) for which reasonable accommodation had been requested;
- Information concerning the nature of the disability and the need for accommodation, including appropriate medical documentation when the disability and/or need for accommodation is not obvious;
- Details of reasonable accommodation request, such as:
 - Type(s) of accommodation requested;
 - Whether the accommodation requested was pre-employment or during their employment with the Department;
 - How the requested accommodation would assist in job performance;
 - The amount of time taken to process the request;
 - Whether the request was granted or denied and, if denied, the reason for the denial; and
 - The sources of technical assistance consulted in trying to identify possible reasonable accommodation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 501, 504, and 701 of the Rehabilitation Act of 1973; ADA Amendments of 2008; Executive Order 13164 (July 28, 2000); and Executive Order 13548 (July 10, 2010).

PURPOSE(S):

The purpose of this system is to allow the Department to collect and maintain records on applicants for employment as well as employees with disabilities who requested or received reasonable accommodation by the Department as required by Sections 501, 504, and 701 of the Rehabilitation Act of 1973 and the ADA Amendments of 2008. The purpose of this system is also to track and report the processing of requests for reasonable accommodation Department-wide to comply with applicable law and regulations and to preserve and maintain the confidentiality of medical information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a

portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), (including United States Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee of DHS in his/her official capacity;
3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use is subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction.

I. To another federal agency or commission with responsibility for labor or employment relations or other issues, including equal employment opportunity and reasonable accommodation issues, when that agency or commission has jurisdiction over reasonable accommodation.

J. To the Office of Management and Budget (OMB), DOJ, Department of Labor (DOL), Office of Personnel Management (OPM), Equal Employment Opportunity Commission (EEOC), or Office of Special Counsel (OSC) to obtain advice regarding statutory, regulatory, policy, and other requirements related to reasonable accommodation.

K. To appropriate third parties contracted by the Department to facilitate mediation or other dispute resolution procedures or programs.

L. To the Department of Defense (DOD) for purposes of procuring assistive technologies and services through the Computer/Electronic Accommodation Program in response to a request for reasonable accommodation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Records may be retrieved by name of requester, employing component or directorate, or any unique identifying number assigned to the request if applicable.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with NARA General Records Schedule (GRS) 1 Section 24 "Reasonable Accommodation Request Records" must be kept for three years from the employee's separation from the agency or after all appeals have concluded, whichever is longer. This includes individual records as well as cumulative records used to track the agency's performance with regard to reasonable accommodations.

All medical information, including information about functional limitations and reasonable accommodation needs obtained in connection with a request for reasonable accommodation must be kept confidential and shall be maintained in files separate from the individual's official personnel file. Additionally, employees who obtain or receive such information are strictly bound by these confidentiality requirements. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.

SYSTEM MANAGER AND ADDRESS:

Reasonable Accommodations Coordinator (202-254-8200), Office for Civil Rights and Civil Liberties, Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the CRCL FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from applicants for employment as well as employees with disabilities who requested or received reasonable accommodations by the Department as required by the Rehabilitation Act of 1973 and the ADA Amendments of 2008.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: June 9, 2011.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. 2011-17548 Filed 7-12-11; 8:45 am]

BILLING CODE 9110-9B-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2011-0112]

Cargo Security Risk Reduction; Public Listening Sessions

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Coast Guard's Office of Port and Facility Activities (CG-544) is sponsoring information and listening sessions in St. Louis, MO and Houston, TX to discuss the progress and development of a CDC Security National Strategy to reduce risks associated with the transport, transfer, and storage of Certain Dangerous Cargo (CDC) in bulk within the U.S. Marine Transportation System. These sessions will be open to the public.

DATES: The first session will be held in St. Louis, MO on Tuesday, August 2, 2011, from 8 a.m. to 1 p.m. The second session will be held in Houston, TX on Thursday, August 18, 2011, from 8 a.m. to 1 p.m.

ADDRESSES: The St. Louis, MO session will be held at the Hilton St. Louis at the Ballpark, One South Broadway, St. Louis, MO 63102. The Houston, TX session will be held at the Hobby Airport Hilton, 8181 Airport Blvd., Houston, TX 77051.

This meeting is open to the public. Please note that the session may adjourn early if all business, concerns, and questions are addressed. Seating may be limited, but session organizers will make every effort to suitably

accommodate all participants. For information on facilities or services for individuals with disabilities, or to request special assistance at either or both sessions, please contact LTJG William Gasperetti or LTJG Bradley Bergan, using the contact information listed in this notice.

Written comments will be received for a short period of time after the public meetings from interested stakeholders.

FOR FURTHER INFORMATION CONTACT: To submit questions and comments or to RSVP for the sessions, send e-mails to CDC@uscg.mil. Comments, questions and responses may be posted for public viewing on the Office of Port and Facility Activities (CG-544) Web site at <http://www.uscg.mil/hq/cg5/cg544/cdc.asp> or the Federal Docket Management System at <http://www.Regulations.gov>. For logistical issues, please contact either LTJG William Gasperetti, Domestic Ports Division (CG-5441) at 202-372-1139 or via e-mail at William.N.Gasperetti@uscg.mil or LTJG Bradley Bergan, Domestic Ports Division (CG-5441) at 202-372-1149 or via e-mail at Bradley.P.Bergan@uscg.mil.

SUPPLEMENTARY INFORMATION:**Background**

In September 2009, the Coast Guard held a Cargo Security Symposium in Reston, Virginia, to inform and guide the development of a national strategy for reducing the maritime security risks present in the bulk transportation and transfer of CDCs within ports and waterways of the United States. Because CDCs have chemical properties that, if released, could result in substantial death and injury in high density population areas and significant damage to critical infrastructure and key resources (CIKR), it is important for the Coast Guard, in concert with stakeholders, to implement a holistic strategy to mitigate CDC transport, transfer, and storage security risks. These security risks can be reduced through sound risk management and shared responsibility between public and private sector stakeholders, across the Security Spectrum.¹

Following the 2009 Cargo Security Symposium, a National Cargo Security Risk Reduction Workgroup for CDCs was chartered by the Coast Guard to discuss CDC security topics that could inform the development of a CDC Security National Strategy. The results of the workgroup's discussions have led to the development of components that

will comprise a working draft of the CDC Security National Strategy. The working draft will be further informed by a required CDC Security National Study, called for by section 812 of the Coast Guard Authorization Act of 2010 and input received at the public listening sessions described in this notice.

Agenda of Public Meeting

The Coast Guard is holding listening sessions to discuss the working draft of the CDC Security National Strategy and further its development. Primarily, we are soliciting stakeholder input on the goals and how best to implement those goals under a "shared responsibility" paradigm. The agenda for the two sessions will principally consist of a presentation and discussion of certain elements of the working draft of the CDC Security National Strategy and future strategy implementation considerations. Included in the CDC Security National Strategy, and to be discussed, are the following goals:

- Provide to internal and external stakeholders real-time national, regional, and local awareness of the risk of intentional attacks on the CDC Marine Transportation System.
- Consistently assess vulnerability to threats of intentional attacks on the CDC Marine Transportation System and mitigate the vulnerability to an acceptable level.
- Dynamically assess the potential consequences of intentional attacks on the CDC Marine Transportation System and capably mitigate, through coordinated response, the impact of a successful attack.
- Lead the development of national, regional, and local resiliency/recovery capability from successful attacks on the CDC Marine Transportation System.

This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: July 7, 2011.

K.C. Kiefer,

Captain, U.S. Coast Guard, Chief, Office of
Port and Facility Activities (CG-544).

[FR Doc. 2011-17636 Filed 7-12-11; 8:45 am]

BILLING CODE 9110-04-P

¹ The Security Spectrum generally consists of Awareness, Prevention/Protection, Response, and Recovery.

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities; Form I-864, Form I-864A, Form I-864EZ, and Form I-864W; Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I-864, Affidavit of Support Under Section 213A of the Act; Form I-864A, Contract Between Sponsor and Household Member, Form I-864 EZ, Affidavit of Support Under Section 213A of the Act; Form I-864W, Intending Immigrant's Affidavit of Support Exemption.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 4, 2011, at 76 FR 25364, allowing for a 60-day public comment period. USCIS received comments from one commenter.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 12, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at USCISFRComment@dhs.gov, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at oir_submission@omb.eop.gov. When submitting comments by e-mail please make sure to add OMB Control No. 1615–0075 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Affidavit of Support Under Section 213A of the Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-864, Form I-864A, Form I-864EZ, and Form I-864W; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. These forms are used by family-based and certain employment-based immigrants to have the petitioning relative execute an Affidavit of Support on their behalf.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I-864, 439,500 responses at 6 hours per response; Form I-864A, 215,800 responses at 1.75 hours per response; Form I-864EZ, 100,000 responses at 2.5 hours per response; Form I-864W, 1,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,265,650 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov>.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW.,

Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: July 7, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–17551 Filed 7–12–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities; Revision of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Memorandum of Understanding to Participate in the Basic Pilot Employment Eligibility Program; Verify Employment Eligibility Status.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 12, 2011.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at USCISFRComment@dhs.gov. When submitting comments by email, please make sure to add OMB Control Number 1615–0092 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check “My Case Status” online at <https://egov.uscis.gov/cris/Dashboard.do>, or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Memorandum of Understanding to Participate in the Basic Pilot Employment Eligibility Program; Verify Employment Eligibility Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File OMB-18. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Business or other for profit. The Basic Pilot Program allows employers to electronically verify the employment eligibility status of newly hired employees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 125,015 completing the MOU at 17 responses at .86 (52 minutes) per response; 521,134 employers registering to participate in the program at 2.26 (2 hours and 15 minutes) per response; 3,333 requiring ID/IQ modification at (2) hours per response; 4,094,955 initial queries at .12 (7 minutes) per response; 195,329 secondary queries at 1.94 (1 hour and 56 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,882,482 annual burden hours.

If you need a copy of the supporting statement, please visit the Web site at: <http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529-2020, Telephone number 202-272-8377.

Dated: July 7, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011-17546 Filed 7-12-11; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Department of Homeland Security, U.S. Citizenship and Immigration Services will be submitting a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: The Office of Management and Budget (OMB) published a 60-day notice in the **Federal Register** on December 22, 2011, at 75 FR 80542, allowing for a 60-day public comment period. USCIS/DHS did not receive any comments for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. Comments must be submitted August 12, 2011.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of

Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529-2020. Comments may also be submitted to DHS via facsimile to 202-272-0997 or via e-mail at

USCISFRComment@dhs.gov and to the OMB USCIS Desk Officer via facsimile at 202-395-5806 or via e-mail at oira_submission@omb.eop.gov. When submitting comments by e-mail please make sure to add "Generic Clearance" in the subject box.

FOR FURTHER INFORMATION CONTACT:

Sunday Aigbe, Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529-2020, telephone 202-272-8380.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which

generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Below we provide The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) projected average estimates for the next three years:

Current Actions: New collection of information.

Type of Review: New collection.

Affected Public: Individuals and households, businesses and organizations.

Average Expected Annual Number of activities: One.

Amount of time estimated for an average respondent to respond: Customer Satisfaction Survey: 15,000 Respondents \times (.50) 30 minutes per response.

An estimate of the total public burden (in hours) associated with the collection: 7,500 annual burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: July 7, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–17553 Filed 7–12–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Supplement A to Form I–539; Extension of an Existing Information Collection: Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Supplement A to Form I–539 (Filing Instructions for V Nonimmigrant Status Applicants).

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 28, 2011 at 76 FR 23833, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 12, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at

USCISFRComment@dhs.gov, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at oir_submission@omb.eop.gov.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0004 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Supplement A to Form I–539 (Filing Instructions for V Nonimmigrant Status Applicants).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Supplement A to Form I–539. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 responses at 30 minutes (.50 hours) per response.

An estimate of the total public burden (in hours) associated with the collection: 100 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: July 7, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–17550 Filed 7–12–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY**Citizenship and Immigration Services****Agency Information Collection Activities: Form I-693, Revision of a Currently Approved Information Collection; Comment Request**

ACTION: 30-Day Notice of Information Collection Under Review: Form I-693, Report of Medical Examination and Vaccination Record.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 13, 2011, at 76 FR 24908, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 12, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: Sunday Aigbe, Chief, Regulatory Products Division, USCIS, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at USCISFRComment@dhs.gov, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at oir_submission@omb.eop.gov. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0033 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Report of Medical Examination and Vaccination Record.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-693; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: *Individuals or households.* The information on the application will be used by USCIS in considering the eligibility for adjustment of status under 8 CFR Part 209 and 8 CFR 210.5, 245.1, and 245a.3.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 800,000 responses at 2.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov>.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: July 7, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–17531 Filed 7–12–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY**Citizenship and Immigration Services****Agency Information Collection Activities: Form I-363, Extension of a Currently Approved Information Collection; Comment Request**

ACTION: 30-Day Notice of Information Collection Under Review: Form I-363, Request to Petition for Custody for Public Law 97–359 Amerasian.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 19, 2011, at 76 FR 21912, allowing for a 60-day public comment period. USCIS received one comment for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 12, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: Sunday Aigbe, Chief, Regulatory Products Division, USCIS, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at USCISFRComment@dhs.gov, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at oir_submission@omb.eop.gov. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0022 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97-359 Amerasian.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-363; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Form I-363 is used by applicants to ensure the financial support of a U.S. citizen. Without the use of Form I-363, the USCIS is not able to ensure the child does not become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov>.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20

Massachusetts Avenue, NW., Washington, DC 20529-2020; Telephone 202-272-8377.

Dated: July 7, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011-17552 Filed 7-12-11; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning July 1, 2011, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

DATES: *Effective Date:* July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in

the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2011-12, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2011, and ending on September 30, 2011. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning October 1, 2011, and ending December 31, 2011.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate Overpayments (Eff. 1-1-99) (percent)
070174	063075	6	6	.....
070175	013176	9	9	.....
020176	013178	7	7	.....
020178	013180	6	6	.....
020180	013182	12	12	.....
020182	123182	20	20	.....
010183	063083	16	16	.....
070183	123184	11	11	.....
010185	063085	13	13	.....
070185	123185	11	11	.....
010186	063086	10	10	.....

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate Overpayments (Eff. 1-1-99) (percent)
070186	123186	9	9	.....
010187	093087	9	8	.....
100187	123187	10	9	.....
010188	033188	11	10	.....
040188	093088	10	9	.....
100188	033189	11	10	.....
040189	093089	12	11	.....
100189	033191	11	10	.....
040191	123191	10	9	.....
010192	033192	9	8	.....
040192	093092	8	7	.....
100192	063094	7	6	.....
070194	093094	8	7	.....
100194	033195	9	8	.....
040195	063095	10	9	.....
070195	033196	9	8	.....
040196	063096	8	7	.....
070196	033198	9	8	.....
040198	123198	8	7	.....
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3

Dated: July 5, 2011.

Alan D. Bersin,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2011-17614 Filed 7-12-11; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-R-2011-N089; 1265-0000-10137-S3]

Cold Springs and McKay Creek National Wildlife Refuges, Umatilla County, OR; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Cold Springs and McKay Creek National Wildlife Refuges, located in Umatilla County, Oregon. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, please provide your written comments by August 12, 2011.

ADDRESSES: Send your comments or requests for more information by any of the following methods:

- *E-mail:* mcriver@fws.gov. Include "Cold Springs and McKay Creek NWRs CCP" in the subject line of the message.

- *Fax:* Attn: Lamont Glass, Refuge Manager, (509) 546-8303.

- *U.S. Mail:* Mid Columbia River National Wildlife Refuge Complex, Cold Springs and McKay Creek CCP, 64 Maple Street, Burbank, WA 99323.

- *In-Person Drop-off:* You may drop off comments during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Lamont Glass, Refuge Manager, Cold Springs and McKay Creek National Wildlife Refuges, (509) 546-8313 (phone), lamont_glass@fws.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Cold Springs and McKay Creek National Wildlife Refuges (NWRs), in Umatilla County, Oregon. This notice complies with our CCP policy to (1) Advise other Federal and State agencies, Tribes, and

the public of our intention to conduct detailed planning on these refuges and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Cold Springs and McKay Creek NWRs.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy

Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR Parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Cold Springs National Wildlife Refuge

Cold Springs NWR covers 3,117 acres of rich and diverse wetland habitats, surrounded by upland habitat of big sagebrush and native steppe grasses. Cold Springs NWR was created by President Theodore Roosevelt on February 25, 1909, as “preserves and breeding grounds for native birds” and “for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.” It overlays Cold Springs Reservoir, a U.S. Bureau of Reclamation (BOR) storage facility, the primary source of irrigation water for local agriculture. The Service manages the lands, whereas the reservoir's water levels are regulated by the BOR. Full pool occurs in May with 1,550 acres of open water. By late August, an average of only 200 acres of water remain.

A mix of several distinct habitat types—open water, riparian, shrub-steppe upland, and seasonal wetlands—attracts a variety of wildlife to the refuge. The open water habitat of the reservoir provides isolation for the resting needs of migrating waterfowl. Large numbers of waterfowl, primarily Canada geese and mallards, can be seen on the open water in winter. They move between the reservoir and the river daily, looking for food or quiet space.

Dense, wide stands of cottonwoods and willows represent the riparian zones on Cold Springs NWR. The area where water meets the land is especially important as it offers wildlife food and shelter choices. The thick underbrush provides excellent habitat for many species of songbirds and is a good place to look for deer, elk, and other animals feeding or resting.

The shrub-steppe upland consists of sagebrush, bitterbrush, rabbitbrush, and native bunchgrasses. Mule deer, coyote, badger, ring-necked pheasant, California quail, and the small resident elk herd can be seen using the uplands throughout the year. Swainson's, Cooper's, and red-tailed hawks and American kestrels may be seen soaring over the uplands.

McKay Creek National Wildlife Refuge

McKay Creek NWR covers 1,837 acres nestled between the plains and the Blue Mountains of eastern Oregon. The refuge was established by President Calvin Coolidge on June 7, 1929, as “a refuge and breeding ground for birds

* * * subject to the use * * * for grazing, and to any other valid existing rights.” It overlays the McKay Creek Reservoir, a BOR storage facility, serving the irrigation needs of the Umatilla River Basin. The Service manages the lands, whereas the water levels are regulated by the BOR. At full pool the refuge consists of 1,300 acres of water and 537 acres of upland habitat. By late September, an average of 250 acres of water remains at minimum pool.

The refuge serves as a recreational destination for residents of nearby Pendleton, Oregon, receiving over 50,000 visitors annually. The majority of visitors engage in fishing. Upland bird hunting is also popular, with many area hunters taking part in the annual pursuit of pheasant and quail. Other visitors simply enjoy bird watching, wildlife photography, or nature.

The mix of several distinct habitat types, including open water, riparian, and upland grasslands, along with the lack of other local wetland habitats, elevates the importance of this refuge as a home to a variety of wildlife and plant species. Aquatic habitats and open water serve as resting and feeding grounds for wintering waterfowl, wading birds, and migrating shorebirds. During peak winter migration, the refuge historically supported large numbers of waterfowl. Mallards and Canada geese comprise the majority of waterfowl, while American wigeon, green-winged teal, and pintail account for smaller numbers.

Thick stands of willow and cottonwood represent the riparian zone—the areas on the refuge where land meets water, which are especially important to wildlife as they offer a variety of food and shelter. Osprey nest in the cottonwoods, and bald eagles frequent the area in fall and winter. The thick underbrush provides excellent habitat for many species of songbirds, like yellow warblers and song sparrows, and is a good place for deer and small animals to feed and rest. During the late summer drawdown, migrating shorebirds can be seen probing the exposed mudflats in search of high energy foods, while colonial nesting birds, like great blue herons and egrets, stand still, waiting for prey.

The surrounding upland grassland community comprises the remaining refuge habitat and consists of a mix of grasses and forbs, including wheatgrass and fescues. A variety of wildlife species can be seen using the uplands throughout the year: ring-necked pheasant, quail, mule deer, songbirds, and hawks.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities for the refuges that we may address in the CCP. We have briefly summarized these issues below. During public scoping, we may identify additional issues.

Cold Springs NWR and McKay Creek NWR

The decline of waterfowl use at the refuges; management of wetland habitats to best benefit waterfowl and other wildlife species; management for long-term viability of riparian habitat; providing benefits to shrub-steppe or grassland obligate species; management of non-wildlife-oriented recreational activities given the increasing visitation at the refuges; increasing the understanding of the natural and cultural resources of the refuges; control of invasive and non-native species; determining if big game hunting is a viable public use at either or both refuges; effective law enforcement; the impacts of climate change and increasing development; monitoring and control of mosquitoes and related human health hazards.

Public Comments

Opportunities for the public to provide input will be announced in press releases, planning updates, and on our Web sites at <http://www.fws.gov/mcriver>, <http://www.fws.gov/coldsprings/management.html>, and <http://www.fws.gov/mckaycreek/management.html>. There will be additional opportunities to provide public input throughout the CCP process.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 17, 2011.

Richard R. Hannan,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2011-17423 Filed 7-12-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-R-2011-N081; 1265-0000-10137-S3]

Conboy Lake and Toppenish National Wildlife Refuges, WA; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for the Conboy Lake National Wildlife Refuge (refuge, NWR), located in Klickitat County, Washington, and the Toppenish National Wildlife Refuge, located in Yakima County, Washington. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, please send your written comments by August 12, 2011.

ADDRESSES: Send your comments or requests for more information by any of the following methods:

- *E-mail:* mcriver@fws.gov. Include "Conboy Lake and Toppenish NWRs CCP" in the subject line of the message.
- *Fax:* Attn: Dan Haas, Planning Team Leader, (509) 546-8303.
- *U.S. Mail:* Mid-Columbia River National Wildlife Refuge Complex, Conboy Lake and Toppenish NWRs CCP, 64 Maple Street, Burbank, WA 99323.

• *In-Person Drop-off:* You may drop off comments during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Shannon Ludwig, Refuge Manager, Conboy Lake and Toppenish National Wildlife Refuges, (509) 865-2405 (phone); Shannon_ludwig@fws.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Conboy Lake NWR, in Klickitat County, Washington, and Toppenish NWR in Yakima County, Washington. This notice complies with our CCP policy to (1) Advise other Federal and State

agencies, Tribes, and the public of our intention to conduct detailed planning on these refuges and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify compatible wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. During the CCP planning process, many elements of refuge management will be considered, including wildlife and habitat protection and management and management of visitor services programs. Public input during the planning process is essential. The CCP

will describe the refuge purposes and desired conditions for the refuge and the long-term conservation goals, objectives and strategies for fulfilling the purposes and achieving those conditions. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Conboy Lake and Toppenish NWRs.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR Parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Refuge Overviews

Conboy Lake NWR

Conboy Lake NWR covers approximately 9,100 acres in the transition zone between arid eastern Washington and wet western Washington, near the southern base of Mt. Adams. The refuge is comprised of a wide variety of habitat types, from the lake itself to wet meadows to Ponderosa pine and oak forests. Because of its varied habitats and its location in the transition zone, the refuge supports an abundance of wildlife species.

Conboy Lake NWR was established “for use as an inviolate sanctuary, or for any other management purpose, for migratory birds” (Migratory Bird Conservation Act; 16 U.S.C. 715d) that is “suitable for— (1) Incidental fish and wildlife-oriented recreational development, (2) the protection of natural resources, [and/or] (3) the conservation of endangered species or threatened species” (Refuge Recreation Act; 16 U.S.C. 460k–1), in order “to conserve (A) fish or wildlife which are listed as endangered species or threatened species * * * or (B) plants” (16 U.S.C. 1534, Endangered Species Act of 1973). The refuge also fills an important role in the management of mallards, northern pintails, and tundra swans during migration periods, and is both a migratory stopover area and breeding site for the Pacific Coast population of the greater Sandhill crane. It is located along the Pacific Flyway and has become a particularly important stopover and wintering ground for migratory birds and waterfowl.

Toppenish NWR

Toppenish NWR was also established “for use as an inviolate sanctuary, or for any other management purpose, for migratory birds” (Migratory Bird

Conservation Act; 16 U.S.C. 715d) that is “suitable for— (1) Incidental fish and wildlife-oriented recreational development, (2) the protection of natural resources, [and/or] (3) the conservation of endangered species or threatened species” (Refuge Recreation Act; 16 U.S.C. 460k–1), “for the development, advancement, management, conservation, and protection of fish and wildlife resources” (Fish and Wildlife Act of 1956; 16 U.S.C. 742f(a)(4)), in order “to conserve (A) fish or wildlife which are listed as endangered species or threatened species * * * or (B) plants” (16 U.S.C. 1534; Endangered Species Act of 1973). Located in arid eastern Washington, approximately 40 miles north of the Oregon border, most of the refuge’s 2,000 acres are nonetheless focused around water. An extensive system of managed and unmanaged wetlands fills an important role in the management of mallards, northern pintails, and lesser Canada geese populations during migration and winter periods. It, too, is located along the Pacific Flyway and has become a particularly important stopover and wintering ground for migratory birds and waterfowl.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We have briefly summarized these issues below. During public scoping, we may identify additional issues.

Conboy Lake NWR

Land acquisition/exchanges/conservation agreements; water rights; water management; wet meadow, riparian, and stream habitat management; short-grass management; upland meadow management; forest management; plant species management (*e.g.*, invasive and nonnative plants, rare plants); animal species management (*e.g.*, Oregon spotted frog, sandhill crane, elk); wildlife-dependent use; effective law enforcement; impacts of climate change; staffing.

Toppenish NWR

Wildlife and habitat management; water rights; wetland management; invasive and nonnative species; rare and listed species recovery; impacts of climate change; contaminants and water quality; wildlife-dependent issues; effective law enforcement; staffing.

Public Comments

Opportunities for the public to provide further input will be announced

in press releases, planning updates, and on our websites at <http://www.fws.gov/mcriver>, <http://www.fws.gov/conboylake/management.html>, and <http://www.fws.gov/toppenish/management.html>. There will be additional opportunities to provide public input throughout the CCP process.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 9, 2011.

Robyn Thorson,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2011–17424 Filed 7–12–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2011–N124; 40120–1112–0000–F2]

Incidental Take Permits and Joint Environmental Assessment for Four Single Family Residences in Escambia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Under the Endangered Species Act (Act), we, the U.S. Fish and Wildlife Service, announce the receipt and availability of four proposed habitat conservation plans (HCPs) and accompanying documents for four independently proposed developments. The take would involve the Federally endangered Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*) on Perdido Key in Escambia County, Florida. Each HCP analyzes the take incidental to construction and occupation of four single-family residences (Projects). We invite public comments on these documents.

DATES: We must receive any written comments at our Regional Office (see **ADDRESSES**) on or before September 12, 2011.

ADDRESSES: Documents are available for public inspection by appointment during normal business hours at the

Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345; or Field Supervisor, Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES**), telephone: 404/679-7313; or Mr. Ben Frater, Field Office Project Manager, at the Panama City Field Office (see **ADDRESSES**), telephone: 850/769-0552, ext. 248.

SUPPLEMENTARY INFORMATION: We announce the availability of four proposed HCPs, accompanying incidental take permit (ITP) applications, and a joint environmental assessment (EA), which analyze the take of the Perdido Key beach mouse incidental to each of the four planned Projects. Patrick and Cheryl Whalen, Larry K. and Dianna Evans, Christopher Carbone, and Scott Stern (Applicants) each request a 30-year ITP under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*), as amended. The Applicants' HCPs describe the mitigation and minimization measures proposed to address the effects on the species.

We specifically request information, views, and opinions from the public via this notice on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the EA pursuant to National Environmental Policy Act (NEPA) regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. Further, we specifically solicit information regarding the adequacy of the HCPs per 50 CFR Parts 13 and 17.

An assessment of the likely environmental impacts associated with the implementation of the Applicants' HCPs, the EA considers the environmental consequences of the no-action alternative and the proposed action. The proposed action alternative is issuance of the ITPs and implementation of the HCPs as submitted by the Applicants. Each of the four HCPs covers activities associated with the construction and occupancy of a single-family residence. Avoidance, minimization and mitigation measures include a reduced design footprint, on-site land management to maintain use of the site by Perdido Key beach mice, and funding off-site habitat acquisition and management.

Public Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you wish to comment, you may submit comments by any one of several methods. Please reference TE17700A-0, TE17698A-0, TE43105A-0, or TE17697A-0 in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to david_dell@fws.gov. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Finally, you may hand-deliver comments to either of our offices listed under **ADDRESSES**.

Covered Area

Perdido Key, a barrier island 16.9 miles long, constitutes the entire historic range of the Perdido Key beach mouse. The areas encompassed by the HCPs and ITP applications are 1.26-acre (Whalen) and 1.29-acre (Evans) parcels located on the Gulf of Mexico on the central portion of Perdido Key, a 0.13-acre landlocked parcel (Stern) on the eastern portion of Perdido Key, and a 0.16-acre landlocked parcel (Carbone) on the central portion of Perdido Key.

Next Steps

We will evaluate each of these ITP applications, including the HCPs and any comments we receive, to determine whether these applications meet the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of each section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation on each action. We will consider the results of each consultation, in combination with the above findings, in our final analysis to determine whether or not to issue each ITP. If we determine that the requirements are met, we will issue the ITPs for the incidental take of the Perdido Key beach mouse.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: June 15, 2011.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2011-17578 Filed 7-12-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R3-ES-2011-N109; 30120-1122-0000-F2]

Draft Environmental Impact Statement and Multi-Species Habitat Conservation Plan; Receipt of Application for Incidental Take Permit; NiSource, Inc.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from NiSource, Inc. (Applicant), for an incidental take permit under the Endangered Species Act of 1973 (ESA). If approved, the permit would be for a 50-year period and would authorize incidental take of 10 species, 9 of which are federally listed and 1 of which is proposed.

The applicant has prepared a multispecies habitat conservation plan (MSHCP) to cover a suite of activities associated with operation of a natural gas pipeline system; the MSHCP also analyzes 33 additional species and provides for measures to avoid take of those species. The Applicant has requested concurrence with their determination that activities will not take these 33 species if implemented in accordance with their MSHCP. We request public comment on the application and associated documents.

DATES: To ensure consideration, please send your written comments on or before October 11, 2011.

ADDRESSES: Send written comments via U.S. mail to the Regional Director, Midwest Region, Attn: Lisa Mandell, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458, or by electronic mail to permitsR3ES@fws.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Mandell, (612) 713-5343.

SUPPLEMENTARY INFORMATION: We have received an application from NiSource, Inc., for an incidental take permit (ITP) (TE02636A) under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; ESA). If approved, the permit would be for a 50-year period and

would authorize incidental take of the following 10 species:

Species	Current listing status
Indiana bat (<i>Myotis sodalis</i>)	Endangered.
Bog Turtle (<i>Glyptemys muhlenbergii</i>)	Threatened.
Madison cave isopod (<i>Antrolana lira</i>)	Threatened.
Nashville crayfish (<i>Orconectes shoupi</i>)	Endangered.
Clubshell (<i>Pleurobema clava</i>)	Endangered.
Fanshell (<i>Cyprogenia stegaria</i>)	Endangered.
James spinymussel (<i>Pleurobema collina</i>)	Endangered.
Northern riffleshell (<i>Epioblasma torulosa rangiana</i>)	Endangered.
Sheepnose (<i>Plethobasus cyphus</i>)	Proposed for listing.
American burying beetle (<i>Nicrophorus americanus</i>)	Endangered.

The Applicant has prepared an MSHCP to cover a suite of activities associated with operation of a natural gas pipeline system in the States of Delaware, Indiana, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, New

York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. The MSHCP also analyzes 33 additional species and provides for measures to avoid take of those species.

The Applicant has requested concurrence with their determination that activities will not take these 33 species if implemented in accordance with their MSHCP:

Species	Current listing status
Delmarva Peninsula fox squirrel (<i>Sciurus niger cinereus</i>)	Endangered.
Gray bat (<i>Myotis grisescens</i>)	Endangered.
Louisiana black bear (<i>Ursus americanus luteolus</i>)	Threatened.
Virginia big-eared bat (<i>Plecotus townsendii virginianus</i>)	Endangered.
West Indian manatee (<i>Trichechus manatus</i>)	Endangered.
Interior least tern (<i>Sterna antillarum</i>)	Endangered.
Lake Erie water snake (<i>Nerodia spiedon insularum</i>)	Threatened.
Shenandoah salamander (<i>Plethodon Shenandoah</i>)	Threatened.
Cheat Mountain salamander (<i>Plethodon nettingi</i>)	Threatened.
Blackside dace (<i>Phoxinus cumberlandensis</i>)	Threatened.
Cumberland snubnose darter (<i>Etheostoma susanae</i>)	Candidate.
Gulf sturgeon (<i>Acipenser oxyrinchus desotoi</i>)	Threatened.
Maryland darter (<i>Etheostoma sellare</i>)	Endangered.
Scioto madtom (<i>Noturus trautmani</i>)	Endangered.
Slackwater darter (<i>Etheostoma boschungii</i>)	Threatened.
Birdwing pearlymussel (<i>Lemiox rimosus</i>)	Endangered.
Cracking pearlymussel (<i>Hemistena lata</i>)	Endangered.
Cumberland bean pearlymussel (<i>Villosa trabalis</i>)	Endangered.
Cumberland monkeyface pearlymussel (<i>Quadrula rafinesque</i>)	Endangered.
Dromedary pearlymussel (<i>Dromus dromas</i>)	Endangered.
Louisiana pearlshell (<i>Margaritifera hembeli</i>)	Endangered.
Oyster mussel (<i>Epioblasma capsaeformis</i>)	Endangered.
Pale Lilliput pearlymussel (<i>Toxolasma cylindrellus</i>)	Endangered.
Purple cat's paw pearlymussel	Endangered.
(<i>Epioblasma obliquata</i>)	Endangered.
Tan riffleshell (<i>Epioblasma florentina walkeri</i>)	Endangered.
White cat's paw pearlymussel (<i>Epioblasma obliquata perobliqua</i>)	Endangered.
White wartyback pearlymussel (<i>Plethobasus cicatricosus</i>)	Endangered.
Karner blue butterfly (<i>Lycaeides melissa samuelis</i>)	Endangered.
Mitchell's satyr butterfly (<i>Neonympha mitchellii mitchellii</i>)	Endangered.
Puritan tiger beetle (<i>Cicindela puritana</i>)	Threatened.
Braun's rock cress (<i>Arabis perstellata</i>)	Endangered.
Pitcher's (sand dune) thistle (<i>Cirsium pitcheri</i>)	Threatened.
Mead's milkweed (<i>Asclepias meadii</i>)	Threatened.

Under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), we announce that we have gathered the information necessary to:

(1) Determine the impacts and formulate alternatives for an environmental impact statement related to:

(a) Issuance of an incidental take permit to the Applicant for the take of nine federally listed species and one species that is proposed for listing and

(b) Implementation of the associated MSHCP, which includes the evaluation of 33 other listed species that may occur in the MSHCP covered lands; and

(2) Evaluate the application for permit issuance, including the MSHCP, which

provides measures to minimize and mitigate the effects of the proposed incidental take of the 10 species and to avoid take of the remaining 33 species included in the MSHCP.

Background

NiSource Inc., headquartered in Merrillville, Indiana, is engaged in natural gas transmission, storage, and

distribution, as well as electric generation, transmission, and distribution. NiSource Inc.'s wholly owned pipeline subsidiaries, Columbia Gas Transmission, LLC; Columbia Gulf Transmission Company; Crossroads Pipeline Company; Central Kentucky Transmission Company; and NiSource Gas Transmission and Storage Company (companies referred to collectively as "NiSource" throughout the MSHCP), are interstate natural gas companies whose primary operations are subject to the Natural Gas Act (15 U.S.C. 717) and fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC) and the U.S. Department of Transportation (USDOT). NiSource is seeking coverage under an Incidental Take Permit under section 10(a)(1)(B) of the ESA to take species in the course of engaging in gas transmission and storage operations activities ("activities").

NiSource contacted the U.S. Fish and Wildlife Service (Service) in late 2005 to discuss options under which it could receive authorization under the ESA to take federally listed species incidental to engaging in certain natural gas transmission activities. Operation and maintenance of NiSource's facilities requires numerous activities conducted on an annual basis. On average, NiSource has approximately 400 projects annually that require some form of review pursuant to the ESA, typically under Section 7 of the ESA. Most of these consultations have resulted in a determination that projects either would not affect or would not likely adversely affect listed species or critical habitat. The majority of these projects have been addressed through informal consultations with the Service Field Offices. These activities include routing right-of-way (ROW) maintenance; facility inspection, upgrade, and replacement; forced relocations; and expansion projects.

Specifically, NiSource wanted to explore options for ESA compliance because it believes that its numerous individual project-focused ESA Section 7 consultations are inefficient and time consuming, and that the traditional consultation approach to regulatory compliance may be too limited a tool to achieve the ESA's conservation goals. For example, when the impacts of natural gas pipeline activities on protected species are quantified for a discrete project, the conservation benefits provided to the species are similarly discrete. Further, the project-by-project approach does not provide the tools necessary to take a holistic, landscape approach to species protection.

NiSource's MSHCP analyzes impacts to the 43 species resulting from three general categories of activities related to NiSource's natural gas systems: (1) General operation and maintenance; (2) safety-related repairs, replacements, and maintenance; and (3) expansion. The covered activities addressed in the MSHCP are those activities necessary for safe and efficient operation of NiSource's pipeline system, many of which are performed pursuant to the regulations and guidance of the FERC and the U.S. Department of Transportation (USDOT), and other regulatory authorities. The geographic scope of this MSHCP will extend across the Service's Midwest, Southeast, and Northeast Regions, covering the general area stretching from Louisiana northeastward to New York where NiSource natural gas systems are in place. For purposes of this MSHCP, NiSource's natural gas pipeline system does not include any electric transmission lines that support the transmission of natural gas.

The MSHCP provides both enhanced conservation of listed species and streamlined regulatory compliance requirements for NiSource's activities, as well as a means to avoid, minimize, and/or mitigate for take of the 10 species caused by covered activities. It also documents measures to be undertaken to avoid adverse effects to the remaining 33 species for which take is not anticipated. The goals of the MSHCP's conservation strategy are to protect MSHCP species and their habitats through the implementation of an environmental compliance program (*e.g.*, practices, standards, training, *etc.*) that meets or exceeds Federal, State, and local regulations and requirements; to enhance the conservation of MSHCP species through the application of rigorous planning, adaptive management, and sound scientific principles; and to support species conservation actions using a landscape approach, maximizing conservation benefits to take species and the ecosystems that support them. The MSHCP is intended to satisfy applicable provisions of the ESA pertaining to federally listed species protection, while improving the permitting efficiency for the construction, operation, and maintenance of NiSource's natural gas pipelines and ancillary facilities through a predictable and accepted structure under which its activities may proceed.

Purpose and Need for Action

In accordance with NEPA, we have prepared an Environmental Impact Statement (EIS) to analyze the impacts

to the human environment that would occur if the requested permit were issued and the associated MSHCP were implemented. The EIS for this action is intended to function programmatically. Specifically, it will provide a general evaluation of impacts. Due to the broad scope of the action, however, future, site-specific evaluations of impacts will be more fully evaluated and analyzed later through the tiering process. Traditionally, tiered NEPA analyses are completed by the agency that issues the programmatic EIS and Record of Decision (ROD). Here, the Service will issue a ROD on the environmental impacts of the proposed action, *i.e.*, issuance of the incidental take permit.

We do not anticipate that the cooperating agencies responsible for authorizing, permitting, or licensing aspects of NiSource's future activities, such as FERC, the U.S. Army Corps of Engineers (USACE), the U.S. Forest Service (USFS), and the National Park Service (NPS), will sign or adopt that ROD. Rather, pursuant to the Council on Environmental Quality's NEPA regulations, such agencies will be encouraged to "tier" off the programmatic EIS by adopting relevant portions of that document. Given the very general nature of the EIS' analysis, cooperating agencies will be required to analyze project impacts more comprehensively as part of their respective permitting processes. The level of such review will depend on the scope and impacts of the specific NiSource project under consideration.

Proposed Action

Section 9 of the Act prohibits the "taking" of threatened and endangered species. However, provided certain criteria are met, we are authorized to issue permits under section 10(a)(1)(B) of the Act for take of federally listed species, when, among other things, such a taking is incidental to, and not the purpose of, otherwise lawful activities. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered and threatened species, or to attempt to engage in any such conduct. Our implementing regulations define "harm" as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Harass, as defined, means "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but

are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3).

The MSHCP analyzes, and the ITP would cover, the various manifestations of take attributable to NiSource activities. For the 10 take species, this would primarily involve harassment, harm, and killing, and, for most species, the take that would occur would include all three subcategories depending on the specific action. If issued, the ITP would authorize incidental take consistent with the Applicant's MSHCP and the permit. To issue the permit, the Service must find that NiSource's application, including its MSHCP, satisfies the criteria of section 10(a)(1)(B) of the ESA and the Service's implementing regulations at 50 CFR 13, 17.22, and 17.32.

The areas covered (“covered lands”) by the Applicant's MSHCP include much of NiSource's pipeline system. NiSource's operating territory traverses 14 States, ranging from New York to Louisiana. The covered lands overlay NiSource's onshore pipeline system in the States of Delaware, Indiana, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. This pipeline system includes approximately 15,562 miles of buried steel pipe ranging in diameter from 2 to 36 inches, 117 compressor stations, and 6,236 measuring and regulating stations. In addition, NiSource operates and maintains underground natural gas storage fields in conjunction with its pipeline system. Currently, NiSource operates 36 storage fields comprised of approximately 3,600 individual storage wells in Maryland, West Virginia, Ohio, Pennsylvania, and New York. Approximately 95 percent of NiSource's annual projects will occur within its existing ROW (typically 50 feet wide, with the buried pipe(s) generally in the center) and result in little ground disturbance.

A portion of NiSource's annual activities to operate, maintain, and expand its natural gas transmission system will likely deviate from NiSource's existing ROW. Therefore, NiSource has proposed a 1-mile-wide corridor centered on NiSource's existing facilities as the best approach for defining this portion of the covered lands. This 1-mile-wide corridor encompasses all of NiSource's onshore pipeline facilities and the majority of its existing storage fields. However, 9 large storage fields that NiSource wishes to expand are located outside the corridor in 12 counties, namely Hocking, Fairfield, Ashland, Knox, and Richland Counties, Ohio; Bedford County,

Pennsylvania; Allegany County, Maryland; and Kanawha, Jackson, Preston, Marshall and Wetzel Counties, West Virginia. NiSource has not identified, for the Service or the public, the locations of the storage fields in these counties, based on its determination that the information is highly sensitive (for Homeland Security purposes) and constitutes confidential business information. Therefore, the covered lands identified in the MSHCP and DEIS have been defined broadly to include, in their entirety, each of the 12 counties in which these storage fields occur.

Although a 1-mile-wide corridor and the boundaries of the 12 counties are used to delineate the covered lands and to identify the potential presence of threatened and endangered species for inclusion in this MSHCP, the MSHCP does not contemplate unlimited construction or other surface disturbance within the corridor or the counties. NiSource will not utilize, clear, or disturb the entire 1-mile-wide corridor or the storage field counties, or even a significant portion of such corridor or counties. The 1-mile-wide corridor and county boundaries were chosen to provide needed flexibility for both the realignment of existing facilities to accommodate future forced relocations (typically resulting from public road construction/maintenance projects) and the minimization of environmental impacts while aligning future replacement and expansion projects.

Because of the nature of this MSHCP, in terms of the scope of covered lands and permit duration, NiSource has not been able to predict with certainty where or when a given covered activity would occur. Thus, the species analyses rely on multiple assumptions to estimate the reasonable worst-case-scenario take for each species considered. Given the uncertainty of certain assumptions, it is possible that the modeling may underestimate the amount of take. To address this, Chapter 7 of the MSHCP provides adaptive management to assess the validity of assumptions and implement specified contingencies. On the other hand, the reasonable worst case scenarios may err on the side of overestimating impacts of the covered activities on the take species. In practice, as the MSHCP is implemented, NiSource anticipates that by utilizing avoidance and minimization measures, the actual take numbers will be much less than the amount estimated. However, obtaining the take authorization and having a process to avoid, minimize, and mitigate the impact of take that does occur will

provide NiSource with the flexibility to be efficient in its operations, while providing a benefit to the take species through the MSHCP's landscape-level conservation approach and mitigation strategy.

NiSource's landscape-level mitigation goal for this MSHCP may be facilitated by the use of a green infrastructure assessment for strategic conservation planning developed for NiSource by The Conservation Fund (TCF), with input from all 14 cooperating States. Green infrastructure offers a conceptual approach for identifying mitigation opportunities at an ecosystem level. Specifically, it is a strategically planned and managed network of natural lands, working landscapes, and other open spaces that conserve ecosystem values and functions and provide associated incidental benefits to human populations. The MSHCP articulates strict criteria for the selection of future mitigation projects. The Green Infrastructure Assessment will assist NiSource in identifying the most beneficial projects to be implemented, consistent with the MSHCP's mitigation prescriptions.

NiSource and the Service sought input from the Federal agency cooperators (the Service, FERC, USACE, USFS, and NPS) on the MSHCP and the agencies' NEPA approach. The MSHCP also has a variety of components for which we seek public review and input. The Madison Cave Isopod, for example, is an elusive underground species that dwells in karst (cave) habitats. The Service has limited understanding of the effect of pipeline activities on some species, such as Madison Cave Isopod, particularly with respect to such things as the reach of surface disturbance on the karst systems. Moreover, the large scale, both geographic and temporal, of the MSHCP brings with it uncertainty and the need to make assumptions in the absence of absolute scientific data. We, therefore, seek input on calculation of the reasonable worst-case scenarios to assess the anticipated amount of take, the mitigation approach, specific criteria to be used to select future projects to compensate for the impacts of the takings, and the adequacy of the proposed funding mechanism, in addition to the adaptive management strategy and approach that NiSource will use to address changed circumstances over the life of the plan.

Alternatives in the Draft EIS

Three alternatives were fully evaluated in the environmental impact statement prepared for this action:

(1) No Action Alternative—NiSource compliance with the ESA would

continue “status quo” through informal and formal Section 7 ESA consultations between cooperating agencies and the USFWS on a project-by-project basis (FERC is the lead agency that regulates NiSource activities). NiSource activities with a Federal nexus (*e.g.*, FERC authorizations, USACE authorizations, and USFS and NPS permitting) would continue to require individual Section 7 ESA consultations to comply with the ESA. NiSource activities with no Federal nexus would continue to be constrained by the lack of any authorization to take listed species protected by the ESA.

(2) Issuance of a 50-year ITP and Approval of the NiSource MSHCP (Proposed Action)—NiSource has sought to address the full range of its ongoing activities holistically as well as identify and manage species and their habitat impacts systemwide. The Service agreed that a multispecies habitat conservation plan developed under Section 10(a)(1)(B) of the ESA could provide a new opportunity to address and contribute to the conservation and recovery needs of listed species and habitats within the covered lands. Accordingly, NiSource coordinated with the Service to develop its MSHCP to cover a wide array of natural gas pipeline activities over a broad geographic region. Through the MSHCP, NiSource intends to implement a plan that:

- Identifies conservation measures and Best Management Practices to avoid and minimize impacts on species identified in NiSource’s MSHCP;
- Identifies mitigation needs of populations where impacts occur; and
- Implements more comprehensive conservation actions and mitigation for its entire system for 50 years.

Alternative 2 involves issuance of an ITP for the requested 50-year term, including approval of the NiSource MSHCP, associated IA, and acceptance by the Cooperating Agencies and the Service that ITP issuance and MSHCP compliance fulfill the agencies’ obligations under Section 7 of the ESA. At this time, NiSource is requesting incidental take authorization for 10 species resulting from NiSource’s activities within the specified operating territory. An ITP would be issued to NiSource for its activities specific to (1) General Operation and Maintenance (O&M) activities that do not require excavation or significant earth disturbance; (2) safety-related repairs, replacements, and maintenance; and (3) construction and expansion. The proposed area to be covered by the ITP and associated HCP would include a 1-mile-wide corridor centered upon a

majority of NiSource’s existing interstate natural gas transmission (INGT) system in 14 States (Louisiana, Mississippi, Tennessee, Kentucky, Virginia, West Virginia, North Carolina, Indiana, Ohio, Pennsylvania, New York, New Jersey, Delaware and Maryland) for approximately 15,650 miles. In addition to the designated 1-mile-wide corridor, the ITP and associated MSHCP would also cover 12 counties in Ohio, Pennsylvania, Maryland, and West Virginia, in their entireties, where NiSource operates and intends to expand some of its underground natural gas storage fields. The specific counties this includes are Hocking, Fairfield, Ashland, Knox, and Richland Counties in Ohio; Bedford County in Pennsylvania; Allegany County in Maryland; and Kanawha, Jackson, Preston, Marshall, and Wetzel Counties in West Virginia.

3. Issuance of a 10-year ITP and Approval of the NiSource MSHCP—Alternative 3 involves the same issuance, approval, and acceptance actions detailed above in Alternative 2. However, Alternative 3 considers a permit duration of 10 years, subject to ITP renewal and potential amendments to the MSHCP by NiSource. This alternative would cause a reduced amount of take over a shorter period of time. For a permit duration of 10 years, uncertainty about the MSHCP implementation and environmental consequences would be somewhat reduced. Upon receipt of a request to renew the permit, the Service would re-examine the operating conservation plan to determine whether the biological goals are being met, whether the mitigation approach is functioning as envisioned, whether mitigation is compensating for the take that has occurred over the first 10 years, and whether any adjustment to the incidental take authority may be required as a condition to permit renewal. One result of choosing this alternative, however, is that the mitigation strategy presented in the MSHCP would also be altered, thus involving fewer acres of mitigation for O&M activities at the outset of implementation of the plan. Under this alternative, there also would be a formalized application review process built in by regulation. The Service’s permit regulations require that an application for permit renewal or amendment must be made available for public review and comment. The Service also would need to reevaluate the completed NEPA analysis to determine whether the EIS was sufficient in its analysis of project

impacts beyond the initial term of the permit. Review of the EIS would be subject to public review concurrent with the permit renewal application.

In addition to the three alternatives described above, the Service considered several alternatives in conjunction with MSHCP development that are described in the draft EIS but dismissed from further consideration. They include alternatives that considered such things as variations on the breadth of covered activities, implementation approach, and covered species.

Reviewing Documents and Submitting Comments

Please refer to TE02636A when submitting comments. The permit application and supporting documents (ITP application, MSHCP, draft EIS, Implementing Agreement, and summary documents) may be obtained on the Internet at the following address:

<http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html>.

Please make it clear when commenting whether your comments address the HCP, the draft EIS, both the HCP and draft EIS, or other supporting documents.

Persons without access to the Internet may obtain copies of the documents (application, draft HCP, and draft EIS) by contacting the U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. W., Suite 990, Bloomington, MN 55437–1458 (612–713–5350, voice; 612–713–5292, fax). The documents will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4 p.m.) at the following Regional Offices:

Midwest Region Office: U.S. Fish and Wildlife Service, Ecological Services, 10th Floor—5600 American Blvd. W., Bloomington, MN 55437 (612–713–5350, voice; 612–713–5292, fax);

Southeast Region: 1875 Century Blvd, Suite 200, Atlanta, GA 30345–3319 (404–679–7140, voice; 404–679–7081, fax);

Northeast Region: 300 Westgate Center Drive, Hadley, MA 01035–9589 (413–253–8304, voice; 413–253–8293, fax).

Written comments will be accepted as described under **ADDRESSES**, above.

Public Meetings

Public meetings will be held at three locations in proximity to the proposed covered lands for this MSHCP. Meetings will be held in Columbus, Ohio; Lexington, Kentucky; and Charleston, West Virginia as follows:

- August 16, 2011, 7 p.m., University Plaza Hotel and Conference Center,

3110 Olentangy River Road, Columbus, OH 43202.

- August 17, 2011, 7 p.m., Ramada Conference Center, 2143 N. Broadway, Lexington, KY 40505.
- August 18, 2011, 7 p.m., Charleston Ramada Plaza, 400 2nd Ave., S. Charleston, WV 25303.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment, including your personal identifying information, may be made available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Dated: June 21, 2011.

Richard D. Schultz,

Acting Regional Director, Midwest Region, Fort Snelling, Minnesota.

[FR Doc. 2011-17419 Filed 7-12-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Solicitation of Proposals for Technical Assistance Funding From the Native American Business Development Institute

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Office of Indian Energy and Economic Development (IEED), through its Native American Business Development Institute (NABDI), is soliciting proposals from federally recognized American Indian tribes for technical assistance funding to hire consultants to perform feasibility studies of economic development opportunities or long-term, strategic, reservation-wide economic development plans. These feasibility studies will empower American Indian tribes and tribal businesses to make informed decisions regarding their

economic futures. Feasibility studies may concern the viability of an economic development project or business or the practicality of a technology a tribe may choose to pursue. The IEED will use a competitive evaluation process to select several proposed projects to receive an award.

DATES: Submit grant proposals on or before August 12, 2011. We will not consider grant proposals received after this date.

ADDRESSES: Mail or hand-carry grant proposals to the Department of the Interior, Office of Indian Energy and Economic Development, Attention: Victor Christiansen, 1951 Constitution Avenue, NW., Washington, DC 20245, or e-mail at Victor.Christiansen@bia.gov.

FOR FURTHER INFORMATION CONTACT: Victor Christiansen (202) 219-0739.

SUPPLEMENTARY INFORMATION:

- Background
- Items to Consider Before Preparing an Application for NABDI Technical Assistance Funding
- How to Prepare an Application for NABDI Technical Assistance Funding
- Submission of Application in Digital Format
- Application Evaluation and Administrative Information
- When to Submit
- Where to Submit
- Transfer of Funds
- Reporting Requirements for Award Recipients
- Requests for IEED Assistance

A. Background

The IEED established NABDI to provide technical assistance funding on a competitive basis to federally recognized American Indian tribes seeking to retain consultants to perform feasibility studies of economic development opportunities or long-term, strategic, reservation-wide economic development plans. Consultants may include universities and colleges, private consulting firms, non-academic/non-profit entities, or others. The feasibility studies will empower American Indian tribes and tribal businesses to make informed decisions regarding their economic futures. Feasibility studies may concern the viability of an economic development project or business or the practicality of a technology a tribe may choose to pursue.

This is an annual program whose primary objective is to create jobs and foster economic activity within tribal communities. When funding is available, IEED will solicit proposals for feasibility studies and reservation-wide economic development plans. To

receive these funds, tribes may use the contracting mechanism established by Public Law 93-638, the Indian Self-Determination Act or may obtain adjustments to their funding from the Office of Self-Governance. See 25 U.S.C. 450 *et seq.*

The NABDI program is funded under the non-recurring appropriation of the Bureau of Indian Affairs' (BIA) budget. Congress appropriates funds on a year-to-year basis. Thus, while some projects may extend over several years, funding for successive years depends on each fiscal year's appropriations.

The information collection requirements contained in this notice have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3504(h). The OMB control number is 1076-0178. The authorization expires on July 31, 2014. An agency may not conduct or sponsor, and you are not required to respond to, any information collection that does not display a currently valid OMB Control Number.

B. Items To Consider Before Preparing an Application for NABDI Technical Assistance Funding

1. Trust Land Status

The NABDI technical assistance funding can only be made available to tribes whose lands are held in trust or restricted fee by the Federal government.

2. Tribes' Compliance History

The IEED will monitor all NABDI technical assistance funding for statutory and regulatory compliance to assure that awarded funds are correctly applied to approved projects. Tribes that expend funds on unapproved functions may forfeit remaining funds in that proposal year, and possibly for any future NABDI technical assistance funding. Consequently, IEED may request a tribe to provide a summary of any funds it has received in past years through other projects approved by IEED, and IEED may conduct a review of prior award expenditures before making a decision on current year proposals.

3. BIA Sanction List

Tribes that are currently under BIA sanction resulting from non-compliance with the Single Audit Act may be ineligible from being considered for an award.

4. Completion of Previous NABDI Technical Assistance Projects

Generally, the IEED will not support nor recommend additional funding for a

project until all project functions scheduled for completion the previous year have been documented by the tribe and reviewed by the IEED.

Under some circumstances, delays encountered in performing the project that are beyond the control of the tribe or their consultant will be taken into consideration when making decisions on future year NABDI technical assistance awards. Such acceptable delays may include late delivery of funding awards to the tribal project, difficulty in finding appropriate contractors to perform project functions, permitting issues, and weather delays.

5. Multiple Projects

The IEED will accept more than one application from a tribe for projects, even if the project concerns the same economic development project, business, or technology. For example, a tribe is interested in building and developing a business park on their trust lands could apply for a feasibility study of the business potential the park might generate as well as a business plan on how to market the park. In this situation, two separate proposals can be submitted. The IEED will apply the same objective ranking criteria to each proposal.

6. Multi-Year Projects

The IEED cannot award multi-year funding for a project. Funding available for the NABDI technical assistance is subject to annual appropriations by Congress and therefore, IEED can only consider single-year funded projects. Generally, the feasibility studies of economic development opportunities or long-term, strategic, reservation-wide economic development plans for which NABDI technical assistance funding is available are designed to be completed in one year. It is acceptable that a project may require more than one year to complete due to circumstances such as weather, availability of the consultant, or scope of the project.

The IEED projects requiring funding beyond one-year intervals should be grouped into discrete, single-year units of operation, and then submitted as individual proposals for consideration of IEED award funding. Tribes must be aware, however, that there is no guarantee of NABDI technical assistance awards being available for future years of a multi-year project due to the discretionary nature of NABDI technical assistance funding.

7. Use of Existing Data

The IEED maintains a comprehensive set of tribal data and information. The IEED has spent considerable time and

expense in collecting digital land grids, geographic information system data and imagery data for many reservations. Monthly well status and production data, geophysical data (such as seismic data), geology and engineering data, etc. are all stored at IEED's offices. All of these data sets particular to that tribe are available to a tribe to reduce the cost of its investigations.

Budget line items will not be allowed for data or products that reside at IEED. The tribe or the tribe's consultant must first check with IEED for availability of these data sets on the reservation they are investigating. If IEED does not have a particular data set, then NABDI technical assistance funds may be used to acquire such data.

When a proposal includes the acquisition of new data, the tribe should thoroughly search for preexisting data to ensure there is no duplication. If older data does exist, it may have considerable value. It may be updated or improved upon, either by IEED or by the tribe's consultant.

8. Using Technical Services at IEED

The IEED has many in-house technical capabilities and services that the tribes may wish to use. All services provided by IEED are without charge to the tribes. Tribes can obtain maximum benefit from feasibility studies of economic development opportunities or long-term, strategic, reservation-wide economic development plans by first using IEED's services, or by using IEED services in conjunction with the outside consultants. Services available at IEED include:

- Marketing studies.

9. What the NABDI Technical Assistance Funding Cannot Fund

As stated above, these funds are specifically for technical assistance for only the following: feasibility studies of economic development opportunities or long-term, strategic, reservation-wide economic development plans. Examples of elements that cannot be funded include:

- Establishing or operating a tribal office, and/or purchase of office equipment not specific to the assessment project. Tribal salaries may be included only if the personnel are directly involved in the project and only for the duration of the project;
- Indirect costs and overhead as defined by the Federal Acquisition Regulation;
- Purchase of equipment that is used to develop the feasibility studies or economic development plans, such as computers, vehicles, field gear, etc. (however, the leasing of this type of

equipment for the purpose of developing feasibility studies or economic development plans is allowed);

- Legal fees;
- Application fees associated with permitting;
- Research and development of unproved technologies;
- Training;
- Contracted negotiation fees;
- Purchase of data that is available through IEED; and
- Any other activities not authorized by the tribal resolution or by the award letter.

10. Who performs feasibility studies or economic plans?

The tribe determines who they wish to perform the feasibility studies or economic development plans. A tribe has several choices in who to retain, including but not limited to the following:

- Universities and colleges;
- Private consulting firms; or
- Non-academic, non-profit entities.

There are no requirements or restrictions on how the tribe performs their contracting function for the consultant. The tribe is free to issue the contract through a sole source selection or through competitive bidding. This determination will depend on the tribe's own policies for contracting procedures. However, IEED may weigh the technical qualifications of the consultant(s) chosen by a tribal applicant in determining, on a competitive basis, whether funding will be provided.

C. How To Prepare an Application for NABDI Technical Assistance Funding

Each tribe's application must meet the criteria in this notice. A complete NABDI funding request must contain the following three components:

- A current tribal resolution requesting funding;
- A statement of work describing the project for which the feasibility study is requested or the scope of the plan anticipated;
- A budget indicating the funding amount requested and how it will be spent; and
- A description of the consultant(s) the Tribe wishes to retain including the consultant's technical expertise, training, qualifications, and suitability to undertake the feasibility study or prepare a long-term, reservation-wide economic development plan.

The IEED will consider any funding request that does not contain all of the mandatory components to be incomplete and will return it to the tribe with an explanation. The tribe will then

be allowed to correct all deficiencies and resubmit the proposal for consideration on or before the deadline.

A detailed description of each of the required components follows.

1. Mandatory Component 1: Tribal Resolution

The tribal resolution must be current, and must be signed. It must authorize the tribal request for NABDI technical assistance funding in the same fiscal year as that of the statement of work and must explicitly refer to the statement of work being submitted. The tribal resolution must also include:

(a) A description of the feasibility studies or economic development plan to be developed;

(b) A statement that the tribe is willing to consider implementing the economic opportunities or economic development plan developed using the technical assistance funding;

(c) A statement describing how the tribe plans to retain consultants;

(d) A statement that the tribe will consider public release of information obtained from the feasibility studies or economic development plan. (Public release is meant to include publications, a poster session, attending a property fair, or giving an oral presentation at industry or Federal meetings and conferences. It does *not* mean providing copies of the data or reports to any individual, private company or other government agency without express written permission from the tribal government.)

Note: Any information in the possession of IEED or submitted to IEED throughout the NABDI funding process constitutes government records and may be subject to disclosure to third parties under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of the Interior's FOIA regulations at 43 CFR Part 2, unless a FOIA exemption or exception applies or other provisions of law protect the information. A tribe may, but is not required to, designate information it submits as confidential commercially or financially sensitive information, as applicable, in any submissions it makes throughout the NABDI funding process. If IEED receives a FOIA request for this information, it will follow the procedures in 43 CFR Part 2.

2. Mandatory Component 2: Statement of Work

A tribe may present the statement of work in any form they wish, so long as the statement of work describes the project for which the feasibility study is requested or the scope of the plan anticipated within the fiscal year for which funding is being requested. The statement of work should be well organized, contain as much detail as

possible, yet be presented succinctly to allow a quick and thorough understanding of the proposal by the IEED ranking team.

Many tribes utilize the services of a private consultant to prepare the technical part of the statement of work. However, some tribes may not have these resources and therefore, are urged to seek IEED's assistance in preparing their statement of work. Tribes who want assistance from IEED should make this request in writing to the address provided in the **ADDRESSES** section of this notice. The request should be made as early as possible to give IEED time to provide the assistance.

The statement of work should include the following sections:

(a) *Overview and Technical Summary of the Work:* Prepare a short summary overview of the work to be contracted for that includes the following:

- Elements of the proposed study or plan;
- Reasons why the proposed study or plan is needed;
- Total anticipated funding; and
- A tribal point of contact for the project and contact information.

(b) *Technical Summary of Project:* Provide a technical description of the project area, if sufficient information exists. Give examples of a typical economic opportunity to be examined under the proposal. If possible, include criteria applicable to these types of resource occurrences.

- *Existing Information:* Acknowledge any existing economic development information and provide references. The proposed new study should not duplicate previous work.

- *Environmental or Cultural Sensitive Areas:* Describe and verify if the resources are located in an archeological, environmentally or culturally sensitive area of the reservation. The tribe must also assist IEED with the Environmental Assessment phase of the proposed project.

(c) *Project Objective, Goals and Scope of Work:* Describe why the tribe needs the work to be contracted for. Examples may include:

- Discussion of the short and long term benefits to the tribe.
- Identification of an economic opportunity for possible development.
- Additional information regarding the economic opportunity required for tribal decisionmaking commitments.
- Description of the location of the reservation and focused areas for economic development, if any. Include relevant page size maps and graphs.

(d) *Deliverable Products:* Describe all deliverable products that the consultant

is expected to generate, including interim deliverables, such as status reports and technical data to be obtained, and final deliverables, such as the feasibility study or economic development plan. Describe any maps to be generated, including their types, proposed scales, and how they will help define economic opportunities.

(e) *Resumes of Key Personnel:* If available, provide the resumes of key consultants to be retained. The resumes should provide information on each individual's expertise. If subcontractors are used, these should also be disclosed.

3. Mandatory Component 3: Detailed Budget Estimate

A detailed budget estimate is required for the funding level requested. The detail not only provides the tribe with an estimate of costs, but it also provides IEED with the means of evaluating the cost-benefit of each project. This line-by-line budget must fully detail all projected and anticipated expenditures under the NABDI technical assistance proposal. The ranking committee reviews each budget estimate to determine whether the budget is reasonable and can produce the results outlined under the proposal.

Each proposed project function should have a separate budget. The budget should break out contract and consulting fees, fieldwork, lab and testing fees, travel and all other relevant project expenses. Preparation of the budget portion of a NABDI proposal should be considered a top priority. NABDI proposals that include sound budget projections will receive a more favorable ranking over those proposals that fail to provide appropriate budget projections.

The budget page(s) should provide a comprehensive breakdown for those project line items that involve several components, or contain numerous sub-functions.

(a) *Contracted Personnel Costs.* This includes all contracted personnel and consultants, their respective positions and time (staff-hour) allocations for the proposed functions of a project.

- Personnel funded under the Public Law 93–638 NABDI program must have documented professional qualifications necessary to perform the work. Position descriptions or resumes should be attached to the budget estimate.

- If a consultant is to be hired for a fixed fee, the consultant's expenses should be itemized as part of the project budget.

- Consultant fees must be accompanied by documentation that clearly identifies the qualifications of the proposed consultants, how the

consultant(s) are to be used, and a line item breakdown of costs associated with each consultant activity.

(b) *Travel Estimates.* Estimates should be itemized by airfare, vehicle rental, lodging, and per diem, based on the current federal government per diem schedule.

(c) *Data Collection and Analysis Costs.* These costs should be itemized in sufficient detail for the reviewer to evaluate the charges.

(d) *Other Expenses.* Include computer rental, report generation, drafting, and advertising costs for a proposed project.

D. Submission of Application in Digital Format

Submit the application, including the budget pages, in digital form. IEED will return proposals that are submitted without the digital components.

Acceptable formats are Microsoft Word and Adobe Acrobat PDF on compact disks (CDs) or floppy disks. The budget must be submitted in a Microsoft Excel spreadsheet.

Each file must be saved with a filename that clearly identifies the file being submitted. File name extensions must clearly indicate the software application used in preparing the documents (e.g., doc, .pdf).

Documents that require an original signature, such as cover letters, tribal resolutions, and other letters of tribal authorization can be submitted in hard copy (paper) form.

If you have any additional questions concerning the NABDI program proposal submission process, please contact Victor Christiansen at 202-219-0739.

E. Application Evaluation and Administrative Information

1. Administrative Review

Upon receiving an application, IEED will determine whether it contains the mandatory components listed above and does not duplicate or overlap previous or current funded NABDI technical assistance projects.

IEED staff may return an application that does not include all information and documentation required within this notice. During the review of a proposal, IEED may request the submission of additional information.

2. Ranking Criteria

Proposals will be formally evaluated by a Review and Ranking Panel using the six criteria listed below. Each criterion provides a percentage of the total maximum rating of 100 points.

(a) *Economic Opportunity Potential; 10 points.* If the economic opportunity

is patently not feasible, then the proposal will be rejected. The panel will base their scoring on both the information provided by the tribe and databases maintained by IEED. It is critical that the tribe attempt to provide all pertinent information in their proposal in order to ensure that an accurate review of the proposal is accomplished.

(b) *Marketability of the Opportunity; 20 points.* Reviewers will base their scoring on both the short- and long-term market conditions of the economic opportunity. Reviewers are aware that marketability depends upon existing and emerging market conditions. Reviewers are aware of pitfalls surrounding long-term market forecasts, so the proposal should address this element fully. The potential for improving markets may be suggested by market indicators. Examples of market indicators include price history, prices from the futures markets, fundamental factors like supply shortages, and changes in technology.

(c) *Economic Benefits Produced by the Project; 35 points.* To receive a high score for this ranking criterion, the proposal should clearly state how the project would achieve economic benefits for the tribe with an emphasis on reservation job creation.

(d) *Tribes' Willingness to Implement; 10 points;* The tribe's willingness to consider implementing any recommendations resulting from the feasibility studies or economic development plan must be clearly stated in the proposal and the tribal resolution. Note that this is *not* a statement for mandatory implementation, but just that the tribe is willing to implement. The decision on whether to implement will always lie with the tribe. The willingness-to-implement statement should sufficiently explain how the tribe intends to accomplish this task.

(e) *Tribal Commitment to the Project; 25 points:* To receive a high score for this criterion, the tribe should explain how it will participate in the technical assistance, such as by appointing a designated lead and contact person (especially a person with some knowledge of the technical aspects of economic opportunities, and direct contact with the tribe's natural resource department and tribal council), to be committed to the successful completion of the project.

3. Ranking of Proposals and Award Letters

The Review and Ranking Panel will rank the NABDI technical assistance proposals using the selection criteria outlined in this section. The committee

will then forward the rated requests to the Director of the IEED (Director) for approval. Once approved, the Director will submit all proposals to the Assistant Secretary—Indian Affairs for concurrence and announcement of awards to those selected tribes, via written notice. Those tribes not receiving an award will also be notified immediately in writing.

F. When To Submit

IEED will accept applications at any time before the deadline stated in the **DATES** section of this notice, and will send a notification of receipt to the return address on the application package, along with a determination of whether or not the application is complete. IEED will not consider grant proposals after this date. A date-stamped receipt of submission by the BIA Regional or Agency-level office on or before the announced deadline will also be acceptable.

G. Where To Submit

Submit the NABDI technical assistance proposals to IEED at the address listed in the **ADDRESSES** section of this notice. Applicants should also forward a copy of their proposal to their own BIA Agency and Regional offices.

A tribe may fax the cover letter and resolution for the proposal before the deadline, which will guarantee that the proposal will be considered as being received on time. However, IEED asks that tribes or consultants do not send the entire proposal via fax, as this severely overloads the fax system.

The cover letter should also state that the proposal is being sent via FedEx or mail. An original signature copy must be received in IEED's office within 5 working days after the deadline, including all signed tribal resolutions and letters of tribal authorization.

The BIA Regional or Agency level offices receiving a tribe's submitted NABDI technical assistance proposal do not have to forward it on to IEED. It is meant to inform them of a tribe's intent to retain consultants using NABDI technical assistance funding. The BIA Regional or Agency offices are free to comment on the tribe's proposal, or to ask IEED for other information.

H. Transfer of Funds

The IEED will transfer a tribe's NABDI technical assistance award funds to the BIA Regional Office that serves that tribe, via a sub-allotment funding document coded for the tribe's project. The tribe should anticipate the transfer and be in contact with budget personnel at the Regional and Agency office levels. Tribes receiving NABDI awards must

establish a new 638 contract to complete the transfer process, or use an existing 638 contract, as applicable.

I. Reporting Requirements for Award Recipients

2. Final Reporting Requirements

- **Delivery Schedules.** The tribe must deliver all products and data generated by the proposed NABDI technical assessment project to IEED's office within two weeks after completion of the project.

- **Mandatory Requirement to Provide Products and Data in Digital Form.** The IEED requires that deliverable products be provided in digital format, along with printed hard copies. Reports can be provided in either Microsoft Word or Adobe Acrobat PDF format. Spreadsheet data can be provided in Microsoft Excel, Microsoft Access, or Adobe PDF formats. All vector figures should be converted to PDF format. Raster images can be provided in PDF, JPEG, TIFF, or any of the Windows metafile formats.

- **Number of Copies.** When a tribe prepares the contract for economic development feasibility studies or an economic development plan, it must describe the deliverable products and include a requirement that the products be prepared in standard format (see format description above). Each contract will provide funding for a total of six printed and six digital copies to be distributed as follows:

(a) The tribe will receive two printed and two digital copies of the final deliverable.

(b) The IEED requires four printed copies and four digital copies of the final deliverable. The IEED will transmit one of these copies to the tribe's BIA Regional Office, and one copy to the tribe's BIA Agency office. Two printed and two digital copies will then reside with IEED.

All products generated by the consultant belong to the tribe and cannot be released to the public without the tribe's written approval. Products include, but are not limited to, all reports and technical data obtained maps and cross sections, status reports, and the final report.

J. Requests for IEED Assistance

The IEED staff may provide technical consultation (*i.e.*, work directly with tribal staff or the consultant on a proposed project), provide support documentation and data, provide written language on specialized sections of the proposal, and suggest ways a tribe may retain consultants specializing in a particular area of expertise. However, the tribe is responsible for preparing the

executive summary, justification, and scope of work for their proposal.

The tribe must notify IEED in writing that they require assistance, and IEED will then appoint staff to provide the requested assistance. The tribe's request must clearly specify the type of assistance desired.

Requests for assistance should be submitted well in advance of the proposal deadline established in the **DATES** section of this solicitation to allow IEED staff time to provide the appropriate assistance. Tribes not seeking assistance should also attempt to submit their NABDI proposals well in advance of the deadline to allow IEED staff time to review the proposals for possible deficiencies and allow time to contact the tribe with requests for revisions to the initial submission.

Dated: May 31, 2011.

Paul Tsosie,

Chief of Staff, Assistant Secretary—Indian Affairs.

[FR Doc. 2011-17604 Filed 7-12-11; 8:45 am]

BILLING CODE 4310-4M-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grant Program To Build Tribal Energy Development Capacity

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Solicitation of Proposals.

SUMMARY: The Secretary of the Interior (Secretary), through the Office of Indian Energy and Economic Development (IEED), is soliciting grant proposals from Federally-recognized Indian tribes for projects to build tribal capacity for energy resource development under the Department of the Interior's (DOI) Tribal Energy Development Capacity (TEDC) grant program. Under the Energy Policy Act of 2005, 25 U.S.C. 3502 (Act), Congress appropriates funds on a year-to-year basis to DOI for grants of funds to Indian tribes for use in assessing, developing, and sustaining the managerial and technical capacity needed to develop energy resources on Indian land and properly accounting for resulting energy resource production and revenues. We will use a competitive evaluation process based on criteria stated in the **SUPPLEMENTARY INFORMATION** section of this notice to select projects for funding awards.

DATES: Submit grant proposals August 29, 2011. Grant proposals must be postmarked by this date or they may not be considered.

ADDRESSES: Mail or hand-carry grant proposals to the Department of the Interior, Office of Indian Energy & Economic Development, Attention: Ashley Stockdale, 1951 Constitution Avenue, NW., MS 20-SIB, Washington, DC 20245, or e-mail to Ashley Stockdale at Ashley.Stockdale@bia.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions about the TEDC program, or have technical questions about the tribal energy resource capacity you wish to develop, please contact David B. Johnson at the Office of Indian Energy and Economic Development, 1951 Constitution Avenue, NW., MS 20-SIB, Washington, DC 20245, telephone 202-208-3026, fax 202-208-4564, e-mail DavidB.Johnson@bia.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The IEED administers the TEDC grant program for the benefit of Federally-recognized Indian tribes that wish to build capacity to develop conventional or renewable energy resources on tribal lands. The TEDC grant program helps such tribes in assessing, developing or sustaining the managerial and technical capacity needed to develop energy resources on Indian land and to properly account for resulting energy production and revenues, as provided for in the Act, Title V, Section 503.

Title V, Section 503 of the Act also amended Title XXVI (Indian Energy) of the Energy Policy Act of 1992 to provide for Tribal Energy Resource Agreements (TERAs). The TERAs are agreements between Federally-recognized Indian tribes and the Secretary that allow the tribe, at its discretion, to enter into leases, business agreements, and rights-of-way for energy resource development on tribal lands without further review and approval by the Secretary. The Act and the implementing regulations (25 CFR Part 224) provide that the Secretary must determine that a tribe has the capacity to regulate the development of its energy resource(s) before approving a TERA. The TEDC grants are, therefore, particularly useful to tribes that may wish to pursue a TERA, since the funds are used to help fulfill one of the key requirements for TERA approval—demonstrating capacity to perform the administrative and technical functions included in a TERA. Tribes that are not considering entering into a TERA may also benefit from a TEDC grant for energy resource development on Indian land under other options available to tribes, such as Indian Mineral Development Agreements.

The information collection requirements contained in this notice

have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3504(h). The OMB control number is 1076–0177. The authorization expires on July 31, 2014. An agency may not conduct or sponsor, and you are not required to respond to, any information collection that does not display a currently valid OMB Control Number.

B. General Requirements for TEDC Grant Proposals

1. The TEDC grant proposals must be submitted to IEED in digital format and postmarked by the date in the **DATES** section.

2. Proposals should be presented succinctly, yet in enough detail to allow the TEDC grant evaluation team to quickly and thoroughly understand the purpose, scope and objectives of the proposal.

3. Projects proposed under the TEDC grant program must be capable of being completed within one year of a grant award.

4. The TEDC grant projects may not duplicate previous or ongoing energy resource development capacity building projects.

5. The TEDC grant projects may not include any activities that duplicate efforts of other projects for which federal funds have previously been awarded.

6. Tribes currently under Bureau of Indian Affairs sanction resulting from non-compliance with the Single Audit Act may be ineligible for consideration of a grant award.

7. The TEDC grant proposals will be deemed incomplete, or, at a minimum, points will be deducted, if all mandatory components are not included.

C. Purposes of TEDC Grants

The TEDC grants are intended to help Indian tribes meet the following goals as they relate to assessing, developing, and/or sustaining tribal energy resource development capacity for energy resource(s) the tribe intends to or is developing on Indian land:

1. Determine the current level of the tribe's scientific, technical, administrative, or financial management capacity for identified energy resource development activities;

2. Determine which scientific, technical, administrative, or financial management capacities for tribal energy resource development need enhancement;

3. Determine what process(es) and/or procedure(s) may be used to eliminate capacity gaps or sustain the continued

development of energy resource development capacity (including training); and

4. Determine how the process(es) and/or procedure(s) identified in (c) will be implemented.

D. Activities Eligible for TEDC Grant Funding

Examples of activities eligible for TEDC grants include, but are not limited to, assessing or determining how to develop or sustain the tribe's capacity for:

- Reviewing proposals for leases, business agreements, and rights-of-way;
- Negotiating and reviewing leases, business agreements, or rights-of-way;
- Evaluating the environmental effects of energy resource development projects a tribe may enter into, including those related to cultural resources;
- Monitoring the compliance of a third party with the terms and conditions of any leases, business agreements, and rights of-way a tribe may enter into;
- Establishing and/or managing energy development-related departments or administrative divisions within the tribe;
- Providing for energy development-related technical, scientific, and/or engineering expertise within the tribe;
- Developing or enhancing tribal codes, regulations, or ordinances related to regulating energy resource development; and
- Accounting for energy resource production and revenues.

E. Activities Ineligible for TEDC Grant Funding

- Feasibility studies and energy resource assessments;
- Purchase of resource assessment data;
- Research and development of speculative or unproven technologies;
- Purchase or lease of equipment for the development of energy resources;
- Payment of fees or procurement of any services associated with energy assessment or exploration or development activity;
- Payment of tribal salaries for employees not directly involved in conducting the assessment project and payment of salaries beyond the one-year project;
- Establishment or operation of a tribal office or purchasing office equipment not specific to the capacity building project;
- Indirect costs and overhead as defined by the Federal Acquisition Regulations (FAR);

- Purchase or lease of project equipment such as computers, vehicles, field gear, etc;

- Legal fees;
- Contract negotiation fees; and
- Any other activities not authorized by the tribal resolution or by the approved proposal.

F. TEDC Grant Proposal Mandatory Components

Component 1—Tribal Resolution

Provide a current tribal resolution or other formal, official action of the tribe's governing entity, such as a tribal council or tribal business committee or executive committee, as established under tribal or Federal law and recognized by the Secretary. This document should be signed by a duly authorized tribal official representing the tribe's governing body.

Component 2—TEDC Grant Project Description

(a) Tribal point of contact, including name, title, mailing address, telephone and fax numbers, and e-mail address;

(b) Name and title of responsible party(ies) for technical execution and administration of the project;

(c) Amount of funding requested for the project;

(d) Description of the tribe's identified energy resource(s);

(e) Scope of work describing the proposed project, including: capacity areas related to the identified energy resource on which the proposal's assessment(s) will focus and the approach and justification of the approach to be used in assessing, developing or sustaining the tribe's capacity to manage energy resource development activities and to determine next steps to be taken to eliminate any identified capacity gaps;

(f) Objectives of the proposal describing how the proposed project will contribute to the tribe's capacity building (in assessing, developing or sustaining particular identified areas to be included in the project);

(g) Method of measurement of meeting stated objectives of the proposed project, including data collection and analysis;

(h) Description of deliverable products the proposed project will generate;

(i) Completion date for proposed project, date for interim progress report, and date for final report (see Section I—Post-Award Requirements below);

(j) Resumes of key personnel (tribal employees, consultants, subcontractors) who will work on the proposed project, including information on expertise; and

(k) Description of the tribe's current staff and/or tribal financial resources the tribe plans to apply to performance or completion of the objectives in the tribe's TEDC grant proposal.

Component 3—Existing and Prior Energy Resource Development Experience

(a) Description and examples of the tribe's experience with energy resource development activities, including any previous or current capacity assessment and energy resource assessment, feasibility studies, exploration for or development of specific energy resource(s); and

(b) Description of the tribe's experience and level of existing capacity to manage and regulate energy resource development in areas including, but not limited to:

(1) Land and lease management (including evaluation, negotiation, and enforcement of terms);

(2) Technical, scientific, and engineering evaluation;

(3) Financial and revenue management;

(4) Production accounting;

(5) Environmental review, monitoring, compliance, and enforcement;

(6) Regulatory monitoring (Federal, state, and tribal environmental and safety regulations); and

(7) Tribal environmental code, regulation, or ordinance development or enhancement.

(c) List of all previous or on-going energy resource development capacity building projects for which the tribe has received Federal funds, the source or the funds (e.g., Department of Energy, US Environmental Protection Agency, or DOI), the year(s) for which funds were awarded, and whether such projects were completed and completion dates.

Component 4—Planned Energy Resource Development

(a) Description of the tribe's planned energy resource development activities including capacity assessment, energy resource assessment, feasibility studies, exploration for or development of specific energy resource(s); and

(b) Description of the tribe's plans for managing energy resource development and growth (including plans to develop or enhance tribal offices or independent tribal business entities related to energy resource development, if any).

Component 5—Detailed Budget Estimate

(1) Provide a detailed, line-by-line budget, including all projected and anticipated expenditures under the

TEDC grant proposal, covering the amount of funding requested;

(2) Provide in the budget a breakdown for the proposal's line items that involve several components or contain numerous sub-functions to include, at a minimum:

(a) Itemize costs for all contracted personnel and consultants, their respective positions and time (staff hour) allocations for the proposed functions of the project or part(s) of the project;

(b) Document professional qualifications necessary to perform the work for tribal personnel to be funded under Pub. L. 93-638 and attach position descriptions;

(c) Specify how consultants (if any) are to be used and include documentation that clearly identifies the qualifications of any proposed consultants;

(d) Itemize consultant fees and include a line item breakdown of costs associated with each consultant activity. If a consultant is to be hired for a fixed fee, itemize the consultant's expenses as part of the project budget;

(e) Itemize travel estimates by airfare, vehicle rental, training and conference fees (if any), and lodging and per diem, based on the current Federal Government per diem schedule;

(f) Itemize data collection and analysis costs in sufficient detail for the IEED TEDC grant evaluation team to evaluate the proposed expenses; and

(g) Include other expenses such as computer and other equipment rental, report generation, drafting, and advertising costs for a proposal.

G. Evaluation and Ranking Criteria

The IEED TEDC grant evaluation team will review and evaluate grant proposals on a 100 point system based on the following factors (Mandatory Component 1, the tribal resolution, will not be evaluated):

(1) Mandatory Component 2—TEDC Grant Project Description—30 Points

The IEED TEDC grant evaluation team will use the grant project description objectives, measurement methods, deliverables, and commitment of staff and/or resources to the project as part of its evaluation of the project proposal to determine how likely the project is to result in quantifiable results to the tribe in terms of capacity building to benefit the tribe's future energy resource development.

(2) Mandatory Component 3—Existing and Prior Energy Resource Development Experience—20 Points

The IEED TEDC grant evaluation team will use the tribe's existing and prior energy resource development experience as part of its evaluation of the project proposal to determine the tribe's current level of capacity. Prior or current energy resource development will not, by itself, result in fewer or more assigned points. It is an accurate description of the tribe's baseline capacity that we seek.

(3) Mandatory Component 4—Planned Energy Resource Development—25 Points

The IEED TEDC grant evaluation team will use the tribe's planned energy resource development as part of its evaluation of the project proposal to determine the tribe's potential for proceeding with planned energy resource development, whether or not it has prior or current energy resource development experience.

(4) Mandatory Component 5—Detailed Budget Estimate—25 Points

The IEED TEDC grant evaluation team will use the budget proposal as part of its evaluation of the project to determine whether the budget is reasonable and can produce the results outlined in the proposal under Mandatory Component 2. A TEDC grant proposal budget that includes sound budget projections directly related to the project objectives will receive a more favorable ranking than those proposals that fail to provide appropriate budget projections or that fail to reasonably relate budget projections to the project objectives.

H. Award Notification Process

1. The TEDC grant evaluation team will forward the ranked proposals to the Director of IEED for approval.

2. After the Director's approval, the Director will submit the proposals to the Assistant Secretary-Indian Affairs for concurrence.

3. The Director will notify in writing tribes and tribal energy development organizations of selection or non-selection of proposals for awards.

I. Post-Award Requirements

Tribes that are awarded grants for TEDC projects must adhere to the following requirements:

1. Expend TEDC grant funds only on approved project functions. Tribes are subject to forfeiture of any remaining funds in the project year as well as sanctions against award of any future year TEDC grant funding for expenditures which are not approved;

2. Prepare and submit an interim report (which may consist of a summary of events, accomplishments, problems, and/or results) to the IEED project coordinator by the date the tribe states in its proposal in mandatory component 2;

3. Complete the TEDC project within one year of the award date;

4. Prepare and submit a final report, including all deliverable products generated by the TEDC project within two weeks of completion of the TEDC project or the anniversary of the award date, whichever comes first; and

5. Provide all reports and deliverable products and data generated by the TEDC project to IEED by providing one digital form and two printed copies to IEED at: TEDC Project Coordinator, IEED, U.S. Department of the Interior, 1951 Constitution Avenue, NW., South Interior Building—Room 20, Washington, DC 20245.

J. Submission of Proposal

Submit proposals in digital form to the following electronic address: Ashley.Stockdale@bia.gov. Save files with filenames that clearly identify the file being submitted. File extensions must clearly indicate the software application used for preparation of the documents, (*i.e.*, wpd, doc, pdf). Documents requiring an original signature, such as cover letters, tribal resolutions, or other letters of tribal authorization, must also be submitted in paper form to: ATTN: Tribal Energy Development Capacity Proposal, TEDC Project Coordinator, U.S. Department of the Interior, 1951 Constitution Avenue, NW., South Interior Building—Room 20, Washington, DC 20245.

Complete proposals may be faxed to IEED at 202–208–4564 no later than the date listed in the **DATES** section of this notice; however an original signature copy, including all tribal resolutions or other letters of tribal authorization must be received in IEED's office within 5 working days of the deadline noted above.

Dated: June 13, 2011.

Donald E. Laverdure,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2011–17612 Filed 7–12–11; 8:45 am]

BILLING CODE 4310–4M–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–527]

Probable Economic Effect of Providing Duty-Free, Quota-Free Treatment for Imports From Least-Developed Countries, 2012 Report; Institution of Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Following receipt of a request dated June 16, 2011 from the United States Trade Representative (USTR), the U.S. International Trade Commission (Commission) instituted investigation No. 332–527, *Probable Economic Effect of Providing Duty-Free, Quota-Free Treatment for Imports from Least-Developed Countries*, 2012 Report, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of providing a report that contains the Commission's advice as to the probable economic effect of providing duty-free, quota-free treatment (DFQF) for imports of least-developed countries (LDCs) as outlined in the decision on proposal 36 in Annex F of the Hong Kong Ministerial Declaration on (i) Industries in the United States producing like or directly competitive products, (ii) consumers, (iii) imports under specified U.S. preference programs, and (iv) imports from U.S. free trade agreement (FTA) partner countries.

DATES: September 16, 2011: Deadline for filing written submissions. February 16, 2012: Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://www.usitc.gov/secretary/edis.htm>.

FOR FURTHER INFORMATION CONTACT:

Project Leader Philip Stone, Office of Industries (202–205–3424 or philip.stone@usitc.gov), or Deputy Project Leader Heidi Colby-Oizumi, Office of Industries (202–205–3391 or heidi.colby@usitc.gov), for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the

General Counsel (202–205–3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: In his request letter the USTR noted that World Trade Organization (WTO) Members reached agreement at the WTO Ministerial Conference in Hong Kong in December 2005 to provide DFQF market access to products from the LDCs (as defined by the United Nations), and that the United States announced it would implement this initiative together with the results of the overall negotiations under the Doha Development Agenda (DDA). He also noted that his office in 2007 had requested and received such an analysis, and indicated that it would be useful to have an update of this analysis based on 2010 trade data.

As requested, the Commission, in providing its advice, will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States (HTS) for which U.S. tariffs or tariff-rate quotas remain, and preferential tariff treatment currently being provided to LDCs under the African Growth and Opportunity Act and the Caribbean Basin Initiative programs and that could be provided under the Generalized System of Preferences once Congress renews that program. As requested, the Commission will base its advice on the 2010 HTS nomenclature and trade and tariff rate data for that year, and will provide its advice at the 8-digit HTS level, or the lowest level of aggregation feasible. The Commission will take into account the 2007 advice, and any appropriate comparisons between the data. Additionally, the Commission will, to the extent possible, evaluate the articles in chapters 50 through 63 of the HTS to identify (i) Products not currently imported from LDCs for which imports could potentially increase following the granting of DFQF access and (ii) the possible effect of trade diversion on U.S. imports from all countries with which the United States has FTAs or preferential trade programs, including countries to which the United States is a major exporter of yarns and fabrics.

The USTR asked that the Commission provide its report no later than February 16, 2012. He also indicated that the Commission's report should be classified and marked accordingly, and that he considers the Commission's report to be an inter-agency memorandum that will contain pre-decisional advice and be subject to the deliberative process privilege.

Written Submissions: No public hearing is planned. Interested parties are invited to submit written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., September 16, 2011. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. The Commission may include some or all of the confidential business information submitted in the course of the investigation in the report it sends to the USTR.

Issued: July 8, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–17575 Filed 7–12–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 7, 2011, a proposed Consent Decree in *United States v. Fairchild Semiconductor Corp., et al.*, Civil Action No. 3:11–CV–01261 was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action the United States sought reimbursement of costs of removal and remedial action in connection with the release or threatened release of hazardous substances at the South Mountain Boulevard TCE Site (the "Site") in Mountain Top, Luzerne County, Pennsylvania. The Consent Decree requires Fairchild Semiconductor Corporation, General Electric Company, Harris Corporation, and Intersil Corporation to pay \$428,960 in resolution of the United States' claim for response costs incurred and to be incurred at the Site under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act through the effective date of the consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States v. Fairchild Semiconductor Corp., et al.*, D.J. Ref. 90–11–3–09634.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy from the Consent

Decree Library by mail, please enclose a check in the amount of \$4.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Bob Brook,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–17568 Filed 7–12–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Report on Alien Claims Activity

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Report on Alien Claims Activity," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before August 12, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response and estimated total burden may be obtained from the [RegInfo.gov](http://www.RegInfo.gov) Web site, <http://www.reginfo.gov/public/do/PRAMain>, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail:* OIRA_submission@omb.eop.gov.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The information collection allows the ETA to determine the number of aliens filing for unemployment insurance, the number of benefit issues detected and the denials resulting from the U.S. Citizenship and Immigration Services (USCIS) Systematic Alien Verification for Entitlement (SAVE) Program. From these data, the ETA can determine the extent to which State agencies use the system, and the overall effectiveness and cost efficiency of the USCIS SAVE verification system.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0268. The current OMB approval is scheduled to expire on July 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 8, 2011 (76 FR 12758).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0268. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Report on Alien Claims Activity.

OMB Control Number: 1205–0268.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Burden Hours: 212.

Total Estimated Annual Other Costs Burden: \$0.

Dated: July 6, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–17483 Filed 7–12–11; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a “Certification of Non-Relocation and Market and Capacity Information Report” (Form 4279–2) for the following:

Applicant/Location: AR Mike Enterprise, Inc., Cameron, Arizona.

Principal Product/Purpose: The loan, guarantee, or grant application is to finance the establishment of a new venture involving a Chevron gas station, Burger King Restaurant, McAlister's Deli and a convenience store, which will be located in Cameron, Arizona. The NAICS industry codes for this enterprise are: 447110 (gasoline stations with convenience stores) and 722211 (limited-service restaurants).

DATES: All interested parties may submit comments in writing no later than July 27, 2011.

Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail Dais.Anthony@dol.gov; or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC, this 5th of July 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–17484 Filed 7–12–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public

and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of a module of questions about well-being, to follow the American Time Use Survey in 2012. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before September 12, 2011.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202-691-5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, at 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The ATUS is the Nation's first Federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS develops nationally representative estimates of how people spend their time. Respondents also report who was with them during activities, where they were, how long

each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others.

II. Current Action

Office of Management and Budget clearance is being sought for a 2012 Well-being Module of questions to follow the American Time Use Survey (ATUS). The Well-being Module, if approved, will collect information about how people experience their time, specifically how happy, tired, sad, stressed, and in pain they felt yesterday. Respondents will be asked these questions about three randomly-selected activities from the activities reported in the ATUS time diary. The time diary refers to the core part of the ATUS, in which respondents report the activities they did from 4 a.m. on the day before the interview to 4 a.m. on the day of the interview. A few activities, such as sleeping and private activities, will never be selected. The module also will collect data on whether people were interacting with anyone while doing the selected activities and how meaningful the activities were to them. Some general health questions, a question about overall life satisfaction, and a question about respondents' overall emotional experience yesterday also will be asked.

The data from the proposed Well-being Module will support the BLS mission of providing relevant information on economic and social issues. The data will provide a richer description of work; specifically, it will measure how workers feel (tired, stressed, in pain) during work episodes compared to non-work episodes, and how often workers interact on the job. It can also measure whether the amount of pain workers experience varies by occupation and disability status.

The data also will closely support the mission of the module's sponsor, the National Institute on Aging (NIA) of the National Institutes of Health, to improve the health and well-being of older Americans. By analyzing the module data, the experience of pain and aging can be studied. Some of the questions that can be answered include:

- Do older workers experience more pain on and off the job?
- Is the age-pain gradient related to differences in activities or differences in the amount of pain experienced during a given set of activities?
- Do those in poor health spend time in different activities?

Additionally, the proposed module will allow researchers to take advantage of an important change that was made to the ATUS in 2011. Questions that identify eldercare providers and eldercare activities were added to the survey. The well-being of eldercare providers is of interest to the NIA and policymakers because the elderly population is growing, along with a reliance on informal care providers to assist them. A 2012 Well-being Module would allow researchers to study the well-being of eldercare providers.

The proposed Well-being Module is nearly identical to a module that was collected in 2010 under the ATUS OMB Number (1220-0175); however, the 2012 version includes two additional questions and will be collected under a new OMB Number as a supplement to the ATUS. These new questions will collect data on individuals' overall life satisfaction and their emotional experience yesterday. Information about life satisfaction will complement the moment-to-moment affect measures of well-being and provide an additional dimension to analyses of these data. Information about individuals' overall emotional experience yesterday will be used to explain variance in responses to the affect questions.

The proposed Well-being Module will follow directly after the 2012 ATUS. ATUS collection is done on a continuous basis with the sample drawn monthly. The survey sample is drawn from households completing their final month of interviews for the Current Population Survey (CPS). Households are selected to ensure a representative demographic sample, and one individual from each household is selected to take part in one Computer Assisted Telephone Interview. The interview asks respondents to report all of their activities for one pre-assigned 24-hour day, the day prior to the interview. A short series of summary questions and CPS updates follows the core time diary collection.

The proposed questions about well-being are being sponsored by the NIA. These questions will replace a module of questions about leave that is being fielded for the 2011 calendar year. Like the 2011 Leave Module, the proposed 2012 Well-being Module also will be included for 12 months (through December 2012).

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: New collection.

Agency: Bureau of Labor Statistics.

Title: American Time Use Survey.

OMB Number: 1220-NEW.

Affected Public: Individuals or households.

Total Respondents: 13,200.

Frequency: Monthly.

Total Responses: 13,200.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 1,100 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 7th day of July 2011.

Kimberley Hill,

*Chief, Division of Management Systems,
Bureau of Labor Statistics.*

[FR Doc. 2011-17521 Filed 7-12-11; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2011-0124]

Advisory Committee on Construction Safety and Health (ACCSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of meetings of the Advisory Committee on Construction Safety and Health (ACCSH) and ACCSH Work Groups, and ACCSH member appointments.

SUMMARY: ACCSH will meet July 28, 2011, in Washington, DC. In conjunction with the ACCSH meeting, ACCSH Work Groups will meet July 27, 2011. This **Federal Register** notice also announces the appointment of individuals to ACCSH.

DATES: *ACCSH meeting:* ACCSH will meet from 8 a.m. to 5:30 p.m., Thursday, July 28, 2011.

ACCSH Work Group meetings: ACCSH Work Groups will meet Wednesday, July 27, 2011. (For Work Group meeting times, see the Work Group Schedule information in the **SUPPLEMENTARY INFORMATION** section of this notice.)

Written comments, requests to speak, speaker presentations, and requests for special accommodation: Comments, requests to address the ACCSH meeting, speaker presentations (written or electronic), and requests for special accommodations for the ACCSH and ACCSH Work Group meetings must be submitted (postmarked, sent, transmitted) by July 21, 2011.

ADDRESSES: *ACCSH and ACCSH Work Group meetings:* ACCSH and ACCSH Work Group meetings will be held in Room N-3437 A-C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: Interested persons may submit comments, requests to speak at the ACCSH meeting, and speaker presentations using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the online instructions for submissions.

Facsimile (fax): If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger, or courier service: You may submit your comments, request to speak, and speaker presentation to the OSHA Docket Office, Docket No. OSHA-2011-0124, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350, (TTY) (877) 889-5627). Deliveries (hand deliveries, express mail, messenger, and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., E.T., weekdays.

Requests for special accommodations: Please submit requests for special accommodations to attend the ACCSH

and ACCSH Work Group meetings to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999; e-mail chatmon.veneta@dol.gov.

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA-2011-0124). Because of security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this notice.

Comments, requests to speak, and speaker presentations, including any personal information provided, will be posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions individuals about submitting certain personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Frank Meilinger, OSHA, Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999.

For general information about ACCSH and ACCSH meetings: Mr. Francis Dougherty, OSHA, Directorate of Construction, Room N-3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2020; e-mail dougherty.francis@dol.gov.

SUPPLEMENTARY INFORMATION:

ACCSH Meeting

ACCSH will meet Thursday, July 28, 2011, in Washington, DC. The meeting is open to the public.

ACCSH is authorized to advise the Secretary of Labor (Secretary) and Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3).

The tentative agenda for this meeting includes:

- *Welcome/Remarks from the Office of the Assistant Secretary;*
- *Update from the Directorate of Construction on OSHA's outreach efforts, guidance projects, and enforcement Issues.*
- *Update on the Injury and Illness Prevention Program rulemaking;*
- *Update from the Directorate of Cooperative and State Programs on OSHA's cooperative programs, including VPP, alliances and partnerships.*
- *Update from the Chief of Staff on OSHA's outreach efforts, including the heat-related illness campaign and outreach to vulnerable workers.*
- *Work Group Reports, and Work Group and Committee Administration; and*
- *Public Comment Period.*

ACCSH meetings are transcribed and detailed minutes of the meetings are prepared. The transcript and minutes are placed in the public docket for the meeting. The docket also includes ACCSH Work Group reports, speaker presentations, comments, and other materials and requests submitted to the Committee.

ACCSH Work Group Meetings

In conjunction with the ACCSH meeting, ACCSH Work Groups will meet at the following times on Wednesday, July 27, 2011:

- Backing Operations—8 to 9:15 a.m.;
- Prevention thru Design—9:30 to 10:45 a.m.;
- Construction Health Hazards/Green Jobs—10:45 to Noon;
- Reinforcing Steel in Construction—1 to 2:15 p.m.;
- Injury and Illness Prevention Programs—2:15 to 3:30 p.m.;
- Multilingual Issues, Diversity, Women in Construction—3:45 to 5 p.m.

For additional information on ACCSH Work Group meetings or participating in them, please contact Mr. Dougherty or look on the ACCSH page on OSHA's Web page at <http://www.osha.gov>.

Public Participation—Submissions and Access to Public Record

ACCSH and ACCSH Work Group meetings: ACCSH and ACCSH Work Group meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the building at the Visitors Entrance, at 3rd and C Streets, NW., and pass through building security. Attendees must have valid government-issued photo identification to enter the building. For additional information about building security measures for attending the

ACCSH and ACCSH Work Group meetings, please contact Ms. Chatmon (see **ADDRESSES** section).

Individuals needing special accommodations to attend the ACCSH and ACCSH Work Group meetings also should contact Ms. Chatmon.

Submission of written comments: Interested persons may submit comments using one of the methods in the **ADDRESSES** section. All submissions must include the Agency name and docket number for this ACCSH meeting (Docket No. OSHA–2011–0124). OSHA will provide copies of submissions to ACCSH members.

Because of security-related procedures, submissions by regular mail may experience significant delays. For information about security procedures for submitting materials by hand delivery, express mail, messenger, or courier service, contact the OSHA Docket Office (see **ADDRESSES** section).

Requests to speak and speaker presentations: Individuals who want to address ACCSH at the meeting must submit their requests, and their written or electronic presentations (e.g., PowerPoint) by July 21, 2011, using one of the methods listed in the **ADDRESSES** section. The request must state the amount of time requested to speak, the interest the presenter represents (e.g., business, organization, affiliation), if any, and a brief outline of the presentation. PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2003 and other Microsoft Office 2003 formats.

Alternately, at the ACCSH meeting, individuals may request to address ACCSH briefly by signing the public-comment request sheet and listing the topic(s) to be addressed. In addition, they must provide 20 hard copies of any materials, written or electronic, they want to present to ACCSH.

Requests to address the Committee may be granted at the ACCSH Chair's discretion and as time and circumstances permit. The Chair will give first preference to those individuals who filed speaker requests and presentations by July 21, 2011.

Public docket of the ACCSH meeting: Comments, requests to speak, and speaker presentations, including any personal information you provide, are placed in the public docket of this ACCSH meeting without change and may be available online at <http://www.regulations.gov>. Therefore, OSHA cautions you about submitting certain personal information such as Social Security numbers and birthdates.

The meeting transcript, meeting minutes, documents presented at the ACCSH meeting, Work Group reports,

and other documents pertaining to the ACCSH meeting also are placed in the public docket, and may be available online at <http://www.regulations.gov>.

Access to the public record of ACCSH meetings: To read or download documents in the public docket of this ACCSH meeting, go to Docket No. OSHA–2011–0124 at <http://www.regulations.gov>. All documents in the public record for this meeting are listed in the <http://www.regulations.gov> index; however, some documents (e.g., copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through <http://www.regulations.gov>, are available for inspection and copying in the OSHA Docket Office (see **ADDRESSES** section). Please contact the OSHA Docket Office for assistance making submissions to, or obtaining materials from, the public docket.

Announcement of ACCSH Appointments

The Secretary has appointed the following individuals to two-year terms on ACCSH:

Employee Representatives

- Mr. Gary L. Batykefer, Administrative Director, Sheet Metal Occupational Health Institute Trust.
- Ms. Laurie A. Shadrack, Job Safety and Health Training Specialist, United Association of Plumbers and Pipefitters.
- Mr. Erich J. (Pete) Stafford, Director, Safety and Health, Building and Construction Trades Department, AFL–CIO.

Employer Representative

- Mr. Kevin R. Cannon, Director, Safety and Health Services, Associated General Contractors of America.
- Mr. William E. Hering, Corporate Manager, Environment, Health and Safety, S.M. Electric Company, Inc.
- Mr. Thomas Marrero, Corporate Safety Manager, Zenith Systems, LLC

Public Representative

- Ms. Letitia K. Davis, Director, Occupational Health Surveillance Program, Massachusetts Department of Public Health.

State Safety and Health Agency Representatives

- Mr. Charles Stribling, OSH Federal-State Coordinator, Kentucky Labor Cabinet, Department of Work Place Standards.

The Secretary also has reappointed the following individuals to one-year appointments on ACCSH:

Employee Representatives

- Mr. Walter Jones, Associate Director, Occupational Safety and Health, The Laborers' Health and Safety Fund of North America.
- Mr. Frank L. Migliaccio, Jr., Executive Director, Safety and Health, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers.

Employer Representatives

- Mr. Michael J. Thibodeaux, President, MJT Consulting, Inc.
- Mr. Daniel D. Zarletti, Vice President, Safety and Health, Road Safe Traffic Systems, Inc.

Public Representative

- Ms. Elizabeth Arioto, President, Elizabeth Arioto Safety and Health Consulting Services.

State Safety and Health Agency Representative

- Mr. Steven D. Hawkins, Assistant Administrator, Tennessee Occupational Safety and Health Administration.

Authority and Signature

David Michaels, PhD, M.P.H., Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by Section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3704), the Federal Advisory Committee Act (5 U.S.C. App. 2), 29 CFR Parts 1911 and 1912, 41 CFR Part 102, and Secretary of Labor's Order No. 4-2010 (75 FR 55355 (9/10/2010)).

Signed at Washington, DC on July 7, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011-17554 Filed 7-12-11; 8:45 am]

BILLING CODE 4510-26-P

LEGAL SERVICES CORPORATION**Sunshine Act Meetings; Notice**

DATE AND TIME: The Legal Services Corporation Board of Directors and its five committees will meet on July 20-21, 2011. On Wednesday, July 20, the first meeting will commence at 1:15 p.m., Pacific Daylight Time. On Thursday, July 21, the first meeting will commence at 10:45 a.m., Pacific Daylight Time. On each of these two days, each meeting other than the first meeting of the day will commence promptly upon adjournment of the

immediately preceding meeting. Please note that on Wednesday, July 20, meetings of the Finance Committee and Audit Committee will run concurrently after the meeting of the Promotion & Provision Committee.

LOCATION: Davis Wright Tremaine, LLP, 1201 Third Avenue, Suite 2200, Seattle, Washington 98101.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1-866-451-4981;
- When prompted, enter the following numeric pass code: 5907707348 (or 2755431953 to access the Audit Committee meeting on July 20, 2011);
- When connected to the call, please immediately "mute" your telephone.

Meeting Schedule:

Wednesday, July 20, 2011

Time*: 1:15 p.m.

1. Promotion & Provision for the Delivery of Legal Services Committee
2. Finance Committee**
3. Audit Committee**
4. Operations & Regulations Committee
5. Development Committee

Thursday, July 21, 2011

Time: 10:45 a.m.

1. Board of Directors

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to hear briefings from management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC.***

* Please note that all times in this notice are in the Pacific Daylight Time.

** The Finance Committee meeting will run concurrently with the Audit Committee meeting upon conclusion of the Promotion & Provision Committee meeting.

*** Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting"

A verbatim written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(10), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(h), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Wednesday, July 20, 2011

Promotion & Provision for the Delivery of Legal Services Committee*Agenda*

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of April 15, 2011.
3. Presentation on client board members.
 - Reggie Haley, Office of Program Performance.
 - Latryna Carlton, Florida Rural Legal Services.
 - Richard Harrison, Northwest Justice Project.
 - Jennifer Sommer, Indiana Legal Services.
 - Rosita Stanley, National Legal Aid & Defender Association.
4. Public comment.
5. Consider and act on other business.
6. Consider and act on adjournment of meeting.

Finance Committee*Agenda*

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of April 15, 2011.
3. Approval of the minutes of the Committee's meeting of June 16, 2011.
4. Presentation on LSC's Financial Reports for the first eight months of FY 2011.
 - David Richardson, Treasurer/Comptroller.
5. Consider and act on revisions to the Consolidated Operating Budget for FY 2011 including internal budgetary adjustments and recommendation of *Resolution 2011-XXX* to the Board.
 - David Richardson, Treasurer/Comptroller.
6. Consider and act on the recommendation to the Board on a Temporary Operating Budget for FY 2012.

and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

- David Richardson, Treasurer/Comptroller.
- 7. Discussion of FY 2013 Budget Request.
- 8. Consider and act on amendment to LSC's 403(b) plan.
 - Alice Dickerson, Director, Office of Human Resources.
- 9. Public comment.
- 10. Consider and act on other business.
- 11. Consider and act on adjournment of meeting.

Audit Committee

Agenda

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of April 15, 2011.
3. Report on 403(b) annual plan review and update on annual audit.
 - Alice Dickerson, Director, Office of Human Resources.
4. Consider and act on revised Audit Committee charter.
 - Mattie Cohan, Office of Legal Affairs.
 - Ronald Merryman, Office of the Inspector General.
5. Briefing by the Office of Inspector General.
 - Jeffrey Schanz, Inspector General.
6. Briefing on Oversight of Grantee Compliance.
 - Lora Rath, Acting Director, Office of Compliance and Enforcement.
7. Public comment.
8. Consider and act on other business.
9. Consider and act on adjournment of meeting.

Operations & Regulations Committee

Agenda

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of April 15, 2011.
3. Consider and act on 2010 census and formula distribution issues.
 - Bristow Hardin, Office of Program Performance.
 - John Constance, Director, Office of Government Relations and Public Affairs.
4. Consider and act on potential initiation of rulemaking on enforcement mechanisms and sanctions.
 - Mattie Cohan, Office of Legal Affairs.
 - Laurie Tarantowicz, Office of the Inspector General.
5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

Development Committee

Agenda

1. Approval of agenda.

2. Approval of minutes of the Committee's meeting of April 15, 2011.
3. Report on status of search for a Development Consultant.
 - Atitaya Pratoomtong, Office of Legal Affairs.
4. Consider and act on fundraising plan for the remainder of FY 2011.
5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

Thursday, July 21, 2011

Board of Directors

Agenda

Open Session

1. Pledge of Allegiance.
2. Approval of agenda.
3. Approval of Minutes of the Board's Open Session meeting of April 16, 2011.
4. Approval of Minutes of the Board's Open Session meeting of May 17, 2011.
5. Chairman's Report.
6. Members' Reports.
7. President's Report.
8. Inspector General's Report.
9. Consider and act on the report of the Promotion & Provision for the Delivery of Legal Services Committee.
10. Consider and act on the report of the Finance Committee.
11. Consider and act on the report of the Audit Committee.
12. Consider and act on the report of the Operations & Regulations Committee.
13. Consider and act on the report of the Development Committee.
14. Public comment.
15. Consider and act on other business.
16. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session.

Closed Session

17. Approval of Minutes of the Board's Closed Session meeting of April 16, 2011.
18. Briefing by Management.
19. Briefing by the Office of the Inspector General.
20. Consider and act on General Counsel's report on potential and pending litigation involving LSC.
21. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION:

Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295-1500. Questions may be sent by electronic mail to FR_NOTICE_QUESTIONS@lsc.gov.

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and

Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295-1500 or FR_NOTICE_QUESTIONS@lsc.gov, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: July 8, 2011.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2011-17688 Filed 7-11-11; 11:15 am]

BILLING CODE 7050-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 11-064]

NASA Advisory Council; Space Operations Committee and Exploration Committee; Joint Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a joint meeting of the Space Operations Committee and Exploration Committee of the NASA Advisory Council.

DATES: Tuesday, August 2, 2011, 8 a.m.–2:30 p.m., Wednesday, August 3, 2011, 9:30 a.m.–11:30 a.m.; Local Time. Please see signs.

ADDRESSES: NASA Ames Research Center, Building 152, Dailey Road, NASA Research Park, Moffett Field, CA 94035-1000.

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Exploration Systems Mission Directorate, National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Washington, DC 20546, 202-358-2245; bette.siegel@nasa.gov.

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Task Group on Analysis Groups Final Report.
- Space Operations Mission Directorate/Exploration Systems Mission Directorate Merger Update.

- International Space Station Mars Analog Status Update.
- Commercial Orbital Transportation Services/Cargo Resupply Services and Commercial Crew.
- Multi-Purpose Crew Vehicle/Space Launch System Update.
- Preparation of Recommendation(s) (August 3, 2011).

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be required to comply with NASA security procedures, including the presentation of a valid picture ID. U.S. citizens will need to show valid, officially-issued picture identification such as a driver's license to enter into the NASA Research Park, and must state they are attending the NASA Advisory Council Space Operations Committee and Exploration Committee joint meeting in NASA Building 152. Permanent Resident Aliens will need to show residency status (valid green card) and a valid, officially issued picture identification such as a driver's license and must state they are attending the Space Operations Committee and Exploration Committee joint meeting in NASA Building 152. All non-U.S. citizens must submit, no less than 10 working days prior to the meeting, their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number and expiration date, U.S. Social Security Number (if applicable) to Dr. Bette Siegel, Executive Secretary, Exploration Committee, Exploration Systems Mission Directorate, NASA Headquarters, Washington, DC 20546. For questions, please contact Dr. Siegel at bette.siegel@nasa.gov or by telephone at (202) 358-2245.

Dated: July 7, 2011.

P. Diane Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 2011-17511 Filed 7-12-11; 8:45 am]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby

given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

Literature (application review): August 3-4, 2011 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on August 3rd, and from 9 a.m. to 5 p.m. on August 4th, will be closed.

Literature (application review): August 5, 2011 in Room 716. This meeting, from 9 a.m. to 6 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2011, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5691.

Dated: July 8, 2011.

Kathy Plowitz-Worden,

*Panel Coordinator, Panel Operations,
National Endowment for the Arts.*

[FR Doc. 2011-17528 Filed 7-12-11; 8:45 am]

BILLING CODE 7537-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2011-0148; Docket No. 040-09091, NRC-2011-0148]

Strata Energy, Inc., Ross In Situ Recovery Uranium Project, Crook County, WY; Notice of Materials License Application, Opportunity To Request a Hearing and To Petition for Leave To Intervene, and Commission Order Imposing Procedures for Document Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license application, opportunity to request a hearing and to petition for leave to intervene, and Commission order.

DATES: Requests for a hearing or leave to intervene must be filed by September 12, 2011. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (CFR) 2.4, who believes access to sensitive unclassified non-safeguards information (SUNSI) is necessary to respond to this notice must request document access by July 25, 2011.

ADDRESSES: You can access publicly available documents related to this notice using the following methods:
NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available online in the NRC's Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The *Ross In Situ Recovery Uranium Project License Application* is available electronically under ADAMS Accession Number ML110120063.

FOR FURTHER INFORMATION CONTACT: John L. Saxton, Project Manager, Uranium Recovery Licensing Branch, Division of Waste Management and Environmental Protection, Office of Federal and State

Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-0697; fax number: 301-415-5369; e-mail: john.saxton@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has received, by letter dated January 4, 2011, a license application from Peninsula Minerals, Ltd., doing business as Strata Energy, Inc., requesting a new source and byproduct materials license at its Ross *In Situ* Recovery Uranium Project site located in Crook County, Wyoming. The application can be found in ADAMS under Accession Number ML110120063. Documents related to the application can be found in ADAMS under Docket Number 04009091. Specifically, the application requests the construction and operation of a uranium recovery and processing facility, which involves the extraction of uranium by in situ recovery methods and on-site processing to yellowcake.

An NRC administrative completeness review found the application acceptable for a technical review (ADAMS Accession No. ML111721948). Prior to approving the application, the NRC will need to make the findings required by the Atomic Energy Act of 1954 as amended (the Act), and NRC's regulations. The NRC's findings will be documented in a safety evaluation report and a supplemental environmental impact statement. The supplemental environmental impact statement will be the subject of a subsequent notice in the **Federal Register**.

II. Opportunity To Request a Hearing

The NRC hereby provides note that this is a proceeding on application for a new source and byproduct materials license regarding Strata Energy, Inc.'s proposal to construct and operate a uranium recovery and processing facility in Crook County, Wyoming. Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing Requests, Petitions To Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 1-800-397-4209 or 301-415-4737). NRC regulations are also accessible online in the NRC's Library at

<http://www.nrc.gov/reading-rm/adams.html>.

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene in accordance with the filing instructions in Section IV of this document. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions that support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

A State, county, municipality, Federally-recognized Indian Tribe, or designated representative thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by September 12, 2011. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except State and Federally-recognized Indian Tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in the proceeding pursuant to 10 CFR 2.315(c).

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The presiding officer will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the discretion of the presiding officer, including such limits and conditions as may be imposed in exercise of that discretion upon the making of limited appearance statements. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by September 12, 2011.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document

using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper

format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/EHD/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an

admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attention: Rulemakings and Adjudications Staff*, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.¹ The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order² setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information.

However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this

proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.³

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 7th day of July 2011.

For the Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of Federal Register notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.

¹ While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

² Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

³ Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/Activity
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011-17645 Filed 7-12-11; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-3392-MLA; ASLBP No. 11-910-01-MLA-BD01] [7590-01-P]

Honeywell International Inc.; Establishment of Atomic Safety And Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see, e.g.*, 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding: Honeywell International Inc. (Metropolis Works Uranium Conversion Facility).

This proceeding involves a Request for Hearing filed on behalf of Honeywell International Inc. (Honeywell) in response to the NRC Staff's letter of April 25, 2011, Subject: Response to Court Remand on Denial of Exemption Request from Title 10 of the Code of

Federal Regulations part 30, Appendix C, Regarding Decommissioning Financial Assurance Requirements, Honeywell Metropolis Works. The Request for Hearing challenges the NRC Staff's decision in the April 25 letter denying Honeywell's request for a license amendment authorizing use of an alternate method for demonstrating decommissioning funding assurance for its Metropolis Works uranium conversion facility located in Metropolis, Illinois.

The Board is comprised of the following administrative judges:

Paul S. Ryerson, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

E. Roy Hawkens, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Paul B. Abramson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 6th day of July 2011.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2011-17646 Filed 7-12-11; 8:45 am]

BILLING CODE 7590-01-P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of information collection and request for comments.

SUMMARY: The Peace Corps has submitted a proposed collection of information to the Office of Management and Budget (OMB) for review and clearance under the provisions of the Paperwork Reduction Act of 1995. This notice invites the public to comment on the proposed collection of information by the Peace Corps' Office of Communications. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the

accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

DATES: Comments regarding this collection must be received on or before August 12, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via e-mail to: oira_submission@omb.eop.gov or fax to: 202-395-3086. *Attention:* Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692-1236, or e-mail at pcf@peacecorps.gov. Copies of available documents submitted to OMB may be obtained from Denora Miller.

SUPPLEMENTARY INFORMATION: The Peace Corps Fellows/USA provides opportunities for returned Peace Corps Volunteers to pursue graduate education while working in schools and underserved communities. The purpose of this information collection is to identify areas of the Fellows/USA program that need improvement and better meet the educational needs of inquirers. The survey seeks to discover the reasons why inquirers who have taken the time to contact the Peace Corps for information on the Fellows/USA program have not eventually enrolled.

Title: Fellows/USA Program Improvement Survey.

OMB Control Number: 0420-0537.

Type of Review: Reinstatement, without change, of a previously approved collection which has expired.

Respondents: Returned Peace Corps Volunteers.

Burden to the Public:

- a. Estimated annual number of respondents: 1,000.
- b. Estimated average time to respond: 7 minutes.
- c. Estimated total annual burden hours: 117 hours.
- d. Frequency of response: One time.
- e. Estimated cost to respondents: \$0.00.

Dated: July 7, 2011.

Earl W. Yates,

Associate Director for Management.

[FR Doc. 2011-17537 Filed 7-12-11; 8:45 am]

BILLING CODE 6051-01-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding three Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. *Title and Purpose of information collection:* Certification of Termination of Service and Relinquishment of Rights; OMB 3220-0016.

Under Section 2(e)(2) of the Railroad Retirement Act (RRA), an age and service annuity, spouse annuity, or divorced spouse annuity cannot be paid unless the RRB has evidence that the applicant has ceased railroad employment and relinquished rights to return to the service of a railroad employer. The procedure pertaining to the relinquishment of rights by an annuity applicant is prescribed in 20 CFR 216.24. Under Section 2(f)(6) of the RRA, earnings deductions are required each month an annuitant works in certain nonrailroad employment termed Last Pre-Retirement Non-Railroad Employment.

Normally, the employee, spouse, or divorced spouse relinquishes rights and certifies that employment has ended as part of the annuity application process. However, this is not always the case. In limited circumstances, the RRB utilizes Form G-88, *Certification of Termination of Service and Relinquishment of Rights*, to obtain an applicant's report of termination of employment and relinquishment of rights. One response is required of each respondent.

Completion is required to obtain or retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 24066 on April 29, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Certification of Termination of Service and Relinquishment of Rights.

OMB Control Number: 3220-0016.

Form(s) submitted: G-88.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under Section 2(e)(2) of the Railroad Retirement Act, the Railroad Retirement Board must have evidence that an annuitant for an age and service, spouse, or divorced spouse annuity has ceased railroad employment and relinquished their rights to return to the service of a railroad employer. The collection provides the means for obtaining this evidence.

Changes proposed: The RRB proposes no revisions to Form G-88.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form G-88 is estimated at 6 minutes.

Estimated annual number of respondents: 3,600.

Total annual responses: 3,600.

Total annual reporting hours: 360.

2. *Title and Purpose of information collection:* Statement of Authority to Act for Employee; OMB 3220-0034.

Under Section 5(a) of the Railroad Unemployment Insurance Act (RUIA), claims for benefits are to be made in accordance with such regulations as the RRB shall prescribe. The provisions for claiming sickness benefits as provided by Section 2 of the RUIA are prescribed in 20 CFR 335.2. Included in these provisions is the RRB's acceptance of forms executed by someone else on behalf of an employee if the RRB is satisfied that the employee is sick or injured to the extent of being unable to sign forms.

The RRB utilizes Form SI-10, Statement of Authority to Act for Employee, to provide the means for an individual to apply for authority to act on behalf of an incapacitated employee and also to obtain the information necessary to determine that the delegation should be made. Part I of the form is completed by the applicant for the authority and Part II is completed by the employee's doctor. One response is requested of each respondent. Completion is required to obtain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 24066 on April 29, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement of Authority to Act for Employee.

OMB Control Number: 3220-0034.

Form(s) submitted: SI-10.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under 20 CFR 335.2, the Railroad Retirement Board (RRB) accepts claims for sickness benefits by other than the sick or injured employees, provided the RRB has the information needed to satisfy itself that the delegation should be made.

Changes proposed: The RRB proposes no changes to Form SI-10.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form SI-10 is estimated at 6 minutes.

Estimated annual number of respondents: 400.

Total annual responses: 400.

Total annual reporting hours: 40.

3. Title and Purpose of information collection: Statement Regarding Contributions and Support; OMB 3220-0099.

Under Section 2 of the Railroad Retirement Act, dependency on an employee for one-half support at the time of the employee's death can affect (1) entitlement to a survivor annuity when the survivor is a parent of the deceased employee; (2) the amount of spouse and survivor annuities; and (3) the Tier II restored amount payable to a widow(er) whose annuity was reduced for receipt of an employee annuity, and who was dependent on the railroad employee in the year prior to the employee's death. One-half support may also negate the public service pension offset in Tier I for a spouse or widow(er). The Railroad Retirement Board (RRB) utilizes Form G-134, Statement Regarding Contributions and Support, to secure information needed to adequately determine if the applicant meets the one-half support requirement. One response is requested of each respondent. Completion is required to obtain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 24066 on April 29, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement Regarding Contributions and Support.

OMB Control Number: 3220-0099.

Form(s) submitted: G-134.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households.

Abstract: Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under Section 2 of the Railroad Retirement Act. One-half support is also a condition which may negate the public service pension offset in Tier I for a spouse or widow(er).

Changes proposed: The RRB proposes no revisions to Form G-134.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form G-134 is estimated at 147 minutes with assistance to 180 minutes without assistance.

Estimated annual number of respondents: 100.

Total annual responses: 100.

Total annual reporting hours: 259.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312) 751-3363 or Charles.Mierzwa@RRB.GOV.

Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 or Patricia.Henaghan@RRB.GOV and to the OMB Desk Officer for the RRB, Fax: 202-395-6974, E-mail address: OIRA_Submission@omb.eop.gov.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011-17644 Filed 7-12-11; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 10b-17; SEC File No. 270-427; OMB Control No. 3235-0476.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval for Rule 10b-17 (17 CFR 240.10b-17)—Untimely Announcements of Record Dates.

Rule 10b-17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following specific distributions relating to such class of securities: (1) A dividend or other distribution in cash or in kind other than interest payments on debt securities; (2) a stock split or reverse stock split; or (3) a rights or other subscription offering.

There are approximately 10,137 respondents per year. These respondents make approximately 22,093 responses per year. Each response takes approximately 10 minutes to complete. Thus, the total compliance burden per year is 3,682 burden hours. The total internal labor cost for the respondents, associated with producing and filing the reports, is approximately \$238,188.58.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-

Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: July 7, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-17517 Filed 7-12-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64835; File No. SR-BATS-2011-020]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Extend the Availability of a Data Feed

July 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 5, 2011, BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BATS Rule 11.22 to extend the availability of its TCP FAST PITCH data feed for one additional month to allow recipients of the feed additional time to transition to other Exchange data feeds.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the availability of its TCP FAST PITCH data feed for one additional month to allow recipients of the feed additional time to transition to other Exchange data feeds. The Exchange originally planned to decommission the TCP FAST PITCH data feed effective July 1, 2011, but is proposing to extend this date for one month at the request of certain data recipients that have not completed their transition to one of the alternative data feeds provided by the Exchange.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.³ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,⁴ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that an additional month to allow certain data recipients to transition to other data feeds offered by the Exchange will help to avoid a disruption of such data recipients' business.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public

interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6) thereunder.⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BATS requests that the Commission waive the 30-day operative delay in order to allow BATS to permit the Exchange to continue to offer, until August 1, 2011, the TCP FAST PITCH data feed while certain data recipients transition to another data feed. The Commission believes that waiving the 30-day operative delay⁹ is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2011-020 on the subject line.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BATS has satisfied this requirement.

⁷ 17 CFR 240.19b-4(f)(6).

⁸ *Id.*

⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2011-020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,¹⁰ all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2011-020 and should be submitted on or before August 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-17523 Filed 7-12-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64836; File No. SR-BYX-2011-014]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Extend the Availability of a Data Feed

July 7, 2011

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 5, 2011, BATS Y-Exchange, Inc. ("BYX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BYX Rule 11.22 to extend the availability of its TCP FAST PITCH data feed for one additional month to allow recipients of the feed additional time to transition to other Exchange data feeds.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the availability of its TCP FAST PITCH data feed for one additional month to allow recipients of the feed additional time to transition to other Exchange data feeds. The Exchange originally planned to decommission the TCP FAST PITCH data feed effective July 1, 2011, but is proposing to extend this date for one month at the request of certain data recipients that have not completed their transition to one of the alternative data feeds provided by the Exchange.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.³ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,⁴ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that an additional month to allow certain data recipients to transition to other data feeds offered by the Exchange will help to avoid a disruption of such data recipients' business.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on

¹⁰ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6) thereunder.⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BYX requests that the Commission waive the 30-day operative delay in order to allow BYX to permit the Exchange to continue to offer, until August 1, 2011, the TCP FAST PITCH data feed while certain data recipients transition to another data feed. The Commission believes that waiving the 30-day operative delay⁹ is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BYX-2011-014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BYX-2011-014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,¹⁰ all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BYX-2011-014 and should be submitted on or before August 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-17518 Filed 7-12-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64833; File No. SR-PHLX-2011-95]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Concerning Disseminated Quotations

July 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on June 30, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, through November 30, 2011, a pilot program (the "pilot") under which the Exchange's rules describe the manner in which the PHLX XL[®] automated options trading system³ disseminates quotations when (i) there is an opening imbalance in a particular series, and (ii) there is a Quote Exhaust (as described below) or a Market Exhaust (as described below) quote condition present in a particular series.

The current pilot is scheduled to expire July 31, 2011.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-PHLX-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BYX has satisfied this requirement.

⁷ 17 CFR 240.19b-4(f)(6).

⁸ *Id.*

⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

¹¹ 17 CFR 200.30-3(a)(12).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot through November 30, 2011.

Background

In June, 2009, the Exchange added several significant enhancements to its automated options trading platform (now known as PHLX XL), and adopted rules to reflect those enhancements.⁴ As part of the system enhancements, the Exchange proposed to disseminate a "non-firm" quote condition on a bid or offer whose size is exhausted in certain situations. The non-exhausted side of the Exchange's disseminated quotation would remain firm up to its disseminated size. At the time the Exchange proposed the "one-sided non-firm" quote condition, the Options Price Reporting Authority ("OPRA") was only capable of disseminating option quotations for which both sides of the quotation are marked "non-firm." OPRA did not disseminate a "non-firm" condition for one side of a quotation while the other side of the quotation remains firm.

Accordingly, the Exchange proposed, for a pilot period scheduled to expire November 30, 2009, and later extended through September 30, 2010,⁵ to disseminate quotations in such a circumstance with a (i) a bid price of \$0.00, with a size of one contract if the remaining size is a seller, or (ii) an offer price of \$200,000, with a size of one contract if the remaining size is a buyer.

The Exchange subsequently modified the manner in which the PHLX XL

system disseminates quotes when one side of the quote is exhausted but the opposite side still has marketable size at the disseminated price, by disseminating, on the opposite side of the market from remaining unexecuted contracts: (i) A bid price of \$0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of \$0.00, with a size of zero contracts if the remaining size is a buyer.⁶ That modification was implemented on a pilot basis, scheduled to expire November 30, 2010,⁷ and that pilot was then extended through March 31, 2011.⁸ Subsequently, the pilot was extended through its current expiration date of July 31, 2011.⁹

On October 7, 2010, the U.S. options exchanges, as participants in the OPRA Plan, voted to make technological changes that would enable OPRA to support a one-sided non-firm quote condition. These technological changes provide the opportunity for OPRA and the participants to design, test, and deploy modifications to their systems, and to establish connectivity with quotation vendors, that will support the one-sided non-firm quote condition. Upon the conclusion of the proposed extended pilot (*i.e.*, beginning December 1, 2011), the Exchange intends to implement a system change (and prior to that date to file an appropriate proposed rule change) to disseminate a "non-firm" condition for one side of a quotation while the other side of the quotation remains firm. The Exchange is proposing to extend the current pilot through November 30, 2011, in order to account for the time required to implement the technological changes.

Opening Imbalance

An opening "imbalance" occurs when all opening marketable size cannot be completely executed at or within an established Opening Quote Range ("OQR") for the affected series.¹⁰ Currently, pursuant to Exchange Rule 1017(l)(v)(C)(7), any unexecuted contracts from the opening imbalance not traded or routed are displayed in the

Exchange quote at the opening price for a period not to exceed ten seconds, and subsequently, cancelled back to the entering participant if they remain unexecuted and priced through the opening price, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. During this display time period, the PHLX XL system disseminates, if the imbalance is a buy imbalance, an offer of \$0.00, with a size of zero contracts or, if the imbalance is a sell imbalance, a bid of \$0.00, with a size of zero contracts, on the opposite side of the market from remaining unexecuted contracts.

The purpose of this provision is to indicate that the Exchange has exhausted all marketable interest, at or within the OQR, on one side of the market during the opening process yet has remaining unexecuted contracts on the opposite side of the market that are firm at the disseminated price and size.

Rule 1017(l)(v)(C)(7) is subject to the pilot, which is scheduled to expire July 31, 2011. The Exchange proposes to extend the pilot through November 30, 2011.

Quote Exhaust

Quote Exhaust occurs when the market at a particular price level on the Exchange includes a quote, and such market is exhausted by an inbound contra-side quote or order ("initiating quote or order"), and following such exhaustion, contracts remain to be executed from the initiating quote or order.¹¹

Rather than immediately executing at the next available price, the PHLX XL system employs a timer (a "Quote Exhaust Timer"), not to exceed one second, in order to allow market participants to refresh their quotes. During the Quote Exhaust Timer, PHLX XL currently disseminates the "Reference Price" (the most recent execution price) for the remaining size, provided that such price does not lock an away market, in which case, the Exchange currently disseminates a bid and offer that is one Minimum Price Variation ("MPV") from the away market price. During the Quote Exhaust Timer, the Exchange disseminates: (i) A bid price of \$0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of \$0.00, with a size of zero contracts if the remaining size is a buyer.

Currently, Exchange Rules 1082(a)(ii)(B)(3)(g)(iv)(A)(3),

¹¹ See Exchange Rule 1082(a)(ii)(B)(3).

⁴ See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

⁵ See Securities Exchange Act Release No. 60951 (November 6, 2009), 74 FR 59275 (November 17, 2009) (SR-Phlx-2009-95).

⁶ See Securities Exchange Act Release No. 63024 (September 30, 2010), 75 FR 61799 (October 6, 2010) (SR-Phlx-2010-134).

⁷ *Id.*

⁸ See Securities Exchange Act Release No. 63350 (November 19, 2010), 75 FR 73150 (November 29, 2010) (SR-Phlx-2010-156).

⁹ See Securities Exchange Act Release No. 64056 (March 8, 2011), 76 FR 13678 (March 14, 2011) (SR-Phlx-2011-29).

¹⁰ Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the lowest quote bid and highest quote offer, the PHLX XL system will calculate an OQR for a particular series, outside of which the PHLX XL system will not execute. See Exchange Rule 1017(l)(iii) and (iv).

1082(a)(ii)(B)(3)(g)(iv)(A)(4), 1082(a)(ii)(B)(3)(g)(iv)(B)(2), and 1082(a)(ii)(B)(3)(g)(iv)(C) describe various scenarios under which the PHLX XL system trades, routes, or posts unexecuted contracts after determining the “Best Price” following a Quote Exhaust. These rules permit an up to 10 second time period during which participants may revise their quotes prior to the PHLX XL system taking action. In all of these scenarios, during the up to 10 second time period, the PHLX XL system currently disseminates an offer of \$0.00, with a size of zero contracts if the remaining size is a buyer or, if the remaining size is a seller, a bid of \$0.00, with a size of zero contracts, on the opposite side of the market from remaining unexecuted contracts.

Exchange Rules

1082(a)(ii)(B)(3)(g)(iv)(A)(3), 1082(a)(ii)(B)(3)(g)(iv)(A)(4), 1082(a)(ii)(B)(3)(g)(iv)(B)(2), and 1082(a)(ii)(B)(3)(g)(iv)(C) are subject to the pilot, which is scheduled to expire July 31, 2011. The Exchange proposes to extend the pilot through November 30, 2011.

Current Rule 1082(a)(ii)(B)(3)(g)(vi) describes what the PHLX XL system does if, after trading at the PHLX and/or routing, there are unexecuted contracts from the initiating order that are still marketable. In this situation, remaining contracts are posted for a period of time not to exceed 10 seconds and then cancelled after such period of time has elapsed, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. During the up to 10 second time period, the Exchange will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) A bid price of \$0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of \$0.00, with a size of zero contracts if the remaining size is a buyer.

Rule 1082(a)(ii)(B)(3)(g)(vi) is subject to the pilot. The Exchange proposes to extend the pilot through November 30, 2011.

Market Exhaust

Market Exhaust occurs when there are no PHLX XL participant quotations in the Exchange’s disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the PHLX XL system initiates a “Market Exhaust Auction” for the initiating order.¹²

In this situation, the PHLX XL system will first determine if the initiating order, or a portion thereof, can be executed on the PHLX. Thereafter, if there are unexecuted contracts remaining in the initiating order the PHLX XL system will initiate a Market Exhaust Timer. During the Market Exhaust Timer, the Exchange disseminates any unexecuted size of the initiating order at the “Reference Price,” which is the execution price of a portion of the initiating order, or one MPV from a better-priced away market price if the Reference Price would lock the away market. The PHLX XL system currently disseminates, on the opposite side of the market from the remaining unexecuted contracts: (i) A bid price of \$0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of \$0.00, with a size of zero contracts if the remaining size is a buyer. This provision is subject to the pilot. The Exchange proposes to extend the pilot through November 30, 2011.

Provisional Auction

Exchange Rule

1082(a)(ii)(B)(4)(d)(iv)(E) describes what PHLX XL does after it has explored all alternatives and there still remain unexecuted contracts. During the “Provisional Auction,” any unexecuted contracts from the initiating order are displayed in the Exchange quote for the remaining size for a brief period not to exceed ten seconds and subsequently cancelled back to the entering participant if they remain unexecuted, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. The rule states that during the brief period, the PHLX XL system disseminates, on the opposite side of the market from remaining unexecuted contracts: (i) A bid price of \$0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of \$0.00, with a size of zero contracts if the remaining size is a buyer.¹³

Rule 1082(a)(ii)(B)(4)(d)(iv)(E) is subject to the pilot. The Exchange proposes to extend the pilot through November 30, 2011.

¹³ The Exchange notes that there is a discrepancy between the text of Rule 1014(a)(ii)(B)(4)(d)(iv)(E) and the actual functionality of PHLX XL regarding the Exchange’s disseminated market. The Exchange reported this discrepancy to the Commission and advised membership by way of an Options Trader Alert (“OTA”) which was distributed on May 25, 2011. The Exchange will file a proposed rule change to correct this discrepancy. The OTA is available at <http://www.nasdaqtrader.com/TraderNews.aspx?id=OTA2011-22>.

The Exchange believes that the pilot benefits customers and the marketplace as a whole by enabling PHLX to effectively reflect the market interest the Exchange has that is firm and executable, while at the same time indicating the other side of the Exchange market is not firm and therefore not executable. This allows the Exchange to protect orders on its book and attempt to attract interest to execute against such order.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange further believes that the proposal is consistent with the SEC Quote Rule’s provisions regarding non-firm quotations.¹⁶ Specifically, Rule 602(a)(3)(i) provides that if, at any time a national securities exchange is open for trading, the exchange determines, pursuant to rules approved by the Commission, that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to vendors the data for a subject security required to be made available in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination and, upon such notification, the exchange is relieved of its obligations under paragraphs (a)(1) and (2) of Rule 602 relating to collecting and disseminating quotations, subject to certain other provisions of Rule 602(a)(3).

By disseminating a bid of \$0.00 for a size of zero contracts, or an offer of \$0.00 for a size of zero contracts in certain situations delineated above in the Exchange’s rules, the Exchange believes that it is adequately communicating that it is non-firm on that side of the market in compliance with the Quote Rule.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See 17 CFR 242.602(a)(3)(i) and (ii).

¹² See Exchange Rule 1082(a)(ii)(B)(4)(b).

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6)¹⁸ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2011-95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2011-95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2011-95 and should be submitted on or before August 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Cathy H. Ahn,
Deputy Secretary.

[FR Doc. 2011-17522 Filed 7-12-11; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the 4th quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

¹⁹ 17 CFR 200.30-3(a)(12).

DATES: The meetings for the 4th quarter will be held on the following dates:

Tuesday, July 19, 2011 at 1 p.m. EST.
Tuesday, August 16, 2011 at 1 p.m. EST.
Tuesday, September 20, 2011 at 1 p.m. EST.

ADDRESSES: These meetings will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board:

- SBA Update.
- White Paper follow-up.
- ASBDC Annual Conference.
- Member Roundtable.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Alanna Falcone by fax or e-mail. Her contact information is: Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone, 202-619-1612, Fax 202-481-0134, e-mail, alanna.falcone@sba.gov.

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

Dan S. Jones,
Committee Management Officer.

[FR Doc. 2011-17542 Filed 7-12-11; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a full clearance of an emergency OMB-approved collection and revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, E-mail address: OIRA_Submission@omb.eop.gov.

(SSA), Social Security Administration, DCBPM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400, E-mail address: OPLM.RCO@ssa.gov.

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than September 12, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-8783 or by writing to the above e-mail address.

1. Claimant's Work Background—20 CFR 404.1565(b) and 20 CFR 416.965(b)—0960-0300

Sections 205(a) and 1631(e) of the Social Security Act (Act) provide the Commissioner of Social Security with the authority to establish procedures for determining if a claimant is entitled to disability benefits. SSA may ask individuals who are requesting a hearing before an administrative law judge (ALJ), due to a denied benefits application, to provide background information about work they performed in the past 15 years. SSA uses the information collected on Form HA-4633 to assess an individual's disability and review an updated summary of the individual's relevant work history, as required by an ALJ to accurately assess the claimant's disability. The respondents are claimants for disability benefits under title II or title XVI who requested a hearing before an ALJ.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 50,000 hours.

2. Statement of Claimant or Other Person—Medical Resident FICA Refund Claims—20 CFR 404.702 and 416.570—0960-0786

The Internal Revenue Service (IRS) is contacting medical residents (and their employers) who filed Federal Insurance Contributions Act (FICA) refund claims from 1993 through 2005. Those medical residents who claimed their residencies were actually training, not employment, should not have been subject to FICA tax. The IRS decided to honor these claims and issue a full refund of FICA tax, plus statutory interest, to those who wish to participate in the refund resolution. SSA will remove wages from the participating residents' earnings records for the period of the refund requests, which will cause the residents' recorded earnings to decrease. This not only affects earnings for future retirement benefits, but also could adversely affect those residents (or their beneficiaries) who currently receive Social Security benefits. To ensure residents understand the potential impact on their benefits, SSA is contacting those residents who will be adversely affected and explaining the effect on their Social Security benefits if they accept the IRS FICA refund. To document the residents' decision to accept or revoke the refund, SSA will telephone the residents and explain how accepting the refund will affect their Social Security benefits. We will then mail the SSA-795-OP2 to each resident to sign and return to SSA. If SSA cannot reach the resident by phone, we will send a contact letter and the SSA-795-OP2 to the resident to complete and return to SSA. Once we have the information, we will forward the signed forms to the IRS for the residents who no longer want the FICA refund.

Type of Request: Full approval of an emergency OMB-approved information collection.

Number of Respondents: 496.

Frequency of Response: 1.

Average Burden per Response: 4 minutes.

Estimated Annual Burden: 33 hours.

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than August 12, 2011. Individuals can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance

Officer at 410-965-8783 or by writing to the above e-mail address.

1. Farm Arrangement Questionnaire—20 CFR 404.1082(c)—0960-0064

When self-employed workers submit earnings data to SSA, they cannot count rental income from a farm unless they demonstrate "material participation" in the farm's operation. A material participation arrangement means the farm's owners must perform a combination of physical duties, management decisions, and capital investment in the farm they rent out. In such cases, SSA uses Form SSA-7157, the Farm Arrangement Questionnaire, to document material participation. The respondents are workers who rent farmland to others, are involved in the operation of the farm, and want to claim countable income from work they perform relating to the farm.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 38,000.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 19,000 hours.

2. Information Collections Conducted by State Disability Determination Services on Behalf of SSA—20 CFR, subpart P, 404.1503a, 404.1512, 404.1513, 404.1514, 404.1517, 404.1519; 20 CFR subpart Q, 404.1613, 404.1614, 404.1624; 20 CFR subpart I, 416.903a, 416.912, 416.913, 416.914, 416.917, 416.919 and 20 CFR subpart J, 416.1013, 416.1024, 416.1014—0960-0555

State Disability Determination Services (DDS) collect the information necessary to administer the Social Security Disability Insurance and Supplemental Security Income (SSI) programs. They collect medical evidence from consultative examination (CE) sources, credential information from CE source applicants, and Medical Evidence of Record (MER) from claimants' medical sources. The DDSs collect information from claimants regarding medical appointments and pain/symptoms. The respondents are medical providers, other sources of MER, and disability claimants.

Type of Request: Revision of an OMB-approved information collection.

CE Collections

There are two collections from CE providers: (a) Medical evidence about claimants' medical condition(s) that DDSs use to make disability determinations when the claimant's own medical sources cannot or will not provide the required information; and

(b) proof of credentials from CE providers.

(a) Medical Evidence from CE Providers

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submissions	100,000	1	30	50,000
Electronic Submissions	3,500,000	1	10	583,333
Totals	3,600,000	.....	.....	633,333

(b) CE Credentials

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submission	3,000	1	15	750

There are two CE claimant collections: (a) Claimant completion of a response form indicating whether they

intend to keep their CE appointment; and (b) claimant completion of a form

indicating whether they want a copy of the CE report sent to their doctor.

Type of CE claimant collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Appointment Letter	2,500,000	1	5	208,333
Claimants re: Report to Medical Provider	1,500,000	1	5	125,000
Totals	4,000,000	.....	.....	333,333

MER Collections

The DDSs collect MER information from the claimant's medical sources to

determine the claimant's physical or mental status, prior to making a disability determination.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper submissions	500,000	1	20	166,667
Electronic submissions	5,500,000	1	12	1,100,000
Totals	6,000,000	.....	.....	1,266,667

Pain/Other Symptoms/Impairment Information from Claimants

The DDSs use information about pain/symptoms to determine how pain/

symptoms affect the claimant's ability to do work-related activities prior to making a disability determination.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper submission	2,500,000	1	15	625,000

The total combined burden is 2,859,083.

Note: This is a correction notice. SSA published incorrect burden information for this collection at 76 FR 16847, on March 25, 2011. We are correcting this error here.

Dated: July 8, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011-17555 Filed 7-12-11; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Commercial Space Transportation Advisory Committee (COMSTAC). The teleconference will take place on Thursday, August 11, 2011, starting at 1 p.m. Eastern Daylight Time. Individuals who plan to participate should contact Susan Lender, Designated Federal Officer (DFO), (the Contact Person listed below) by phone or e-mail for the teleconference call in number.

The proposed agenda for this teleconference is the single topic of the structure of the COMSTAC working groups.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or e-mail) by August 4, 2011, so that the information can be made available to COMSTAC members for their review and consideration before the August 11, 2011, teleconference. Written statements should be supplied in the following formats: One hard copy with original signature or one electronic copy via e-mail.

An agenda will be posted on the FAA Web site at <http://www.faa.gov/go/ast>.

Individuals who plan to participate and need special assistance should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST-5), Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267-8029; E-mail susan.lender@faa.gov. Complete information regarding COMSTAC is available on the FAA Web site at: http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.

Issued in Washington, DC, on July 7, 2011.

James Van Laak,

Deputy Associate Administrator for Commercial Space Transportation.

[FR Doc. 2011-17538 Filed 7-12-11; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL HIGHWAY ADMINISTRATION

[FHWA-DC-2011-01-F]

Notice of Availability of the Final Environmental Assessment for the Metropolitan Branch Trail

AGENCY: Federal Highway Administration, District of Columbia Division; and District Department of Transportation; in cooperation with the National Park Service.

ACTION: Notice of availability of the Final Environmental Assessment for the Metropolitan Branch Trail (MBT) Project.

SUMMARY: The U.S. Federal Highway Administration (FHWA) and the District Department of Transportation (DDOT) as lead agencies, and in cooperation with the National Park Service (NPS), announce the availability of the Final Environmental Assessment (Ea) for the Metropolitan Branch Trail Project, pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4347; the Council on Environmental Quality Regulations (40 CFR parts 1500-1508); and the FHWA Environmental Impact and Related Procedures (23 CFR 771).

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, District of Columbia Division: Mr. Michael Hicks, Environmental/Urban Engineer, 1990 K Street, NW., Suite 510, Washington, DC 20006-1103, (202) 219-3536; or District Department of Transportation: Austina Casey, Project Manager, Planning, Policy and Sustainability Administration, 2000

14th Street, NW., 7th Floor, Washington, DC 20009, (202) 671-2740.

SUPPLEMENTARY INFORMATION: The proposed action evaluated in the Environmental Assessment (EA) includes construction of a multi-use trail facility following the Metro red line from Fort Totten to Takoma and the Metro green line from Fort Totten to the District border.

This EA analyzed the potential impacts resulting from constructing and operating the MBT on sections of land owned by the NPS within the area north of Fort Totten (Reservation 451 West), the area east of Fort Totten (Reservation 451 East), the Community Gardens (Reservation 497), and Tacoma Park (Reservation 531). Following the public comment period, DDOT identified Alternatives A1, B1, C1 and/or C2 as the Preferred Alternatives.

Electronic and Hard Copy Access: An electronic copy of this document may be downloaded from the Project Web Site: <http://www.metbranchtrail.com>. Hard copies of the EA may also be viewed at the following locations:

District Department of Transportation, Planning, Policy, and Sustainability Administration, 55 M Street, SE., 4th Floor, Washington, DC 20003.
Martin Luther King, Jr. Memorial Library, 901 G Street, NW., Washington, DC 20001.

Issued: July 7, 2011.

Joseph C. Lawson,

Division Administrator.

[FR Doc. 2011-17577 Filed 7-12-11; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Grants

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Fiscal Year 2011 Funds: Solicitation of Grant Applications.

Funds: Solicitation of project proposals.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the availability of funds in Fiscal Year (FY) 2011 for the Over-the-Road Bus (OTRB) Accessibility Program, authorized by Section 3038 of the Transportation Equity Act for the 21st Century (TEA-21). The OTRB Accessibility Program makes funds available to private operators of over-the-road buses to

finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility regulation. The authorizing legislation calls for national solicitation of applications, with grantees to be selected on a competitive basis. Federal transit funds are available to intercity fixed-route providers and other OTRB providers at up to 90 percent of the project cost. A total of \$8,800,000 is now available for both intercity fixed-route and other providers of services using over-the-road buses.

DATES: Complete applications for OTRB Program grants must be submitted electronically by September 12, 2011 through the Grants.gov Web site. Applicants should initiate the process of registering on the Grants.gov site immediately to ensure completion of registration before the deadline for submission. Paper and/or faxed applications will not be accepted. FTA will announce grant selections in the **Federal Register** when the competitive selection process is complete.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Administrator (Appendix B) for application-specific information and issues. For general program information, contact Blenda Younger, Office of Program Management, (202) 366-4345, e-mail: blenda.younger@dot.gov. A TDD is available at 1-800-877-8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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I. Funding Opportunity Description

A. Authority

The program is authorized under Section 3038 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-85 as amended by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-059, August 10, 2005.

B. Background

OTRBs are used in intercity fixed-route service as well as other services,

such as commuter, charter, and tour bus services. These services are an important element of the U.S. transportation system. TEA-21 authorized FTA's OTRB Accessibility Program to assist OTRB operators in complying with the Department's OTRB Accessibility regulation, "Transportation for Individuals with Disabilities" (49 CFR part 37, subpart H).

Summary of DOT's OTRB Accessibility Rule Deadlines for Acquiring Accessible Vehicles

Under the OTRB Accessibility regulation, all new buses obtained by large (Class I carriers, *i.e.*, those with gross annual transportation revenues of \$8.7 million or more), fixed-route carriers after October 30, 2000, must be accessible, with wheelchair lifts and tie-downs that allow passengers to ride in their own wheelchairs. The rule required 50 percent of the fixed-route operators fleets to be accessible by 2006, and 100 percent of the vehicles in their fleets to be accessible by October 29, 2012. New buses acquired by small (gross transportation revenues of less than \$8.7 million annually) fixed-route operators after October 29, 2001, also are required to be lift-equipped, although they do not have a deadline for total fleet accessibility. Small operators also can provide equivalent service in lieu of obtaining accessible buses. Starting in 2001, charter and tour companies must provide service in an accessible bus on 48 hours advance notice. Fixed-route operators must also provide this kind of service on an interim basis until their fleets are completely accessible.

Deadlines for Delivering Accessible Service

The rules for delivering accessible motorcoach service went into effect October 29, 2001, for large fixed-route, charter, tour and other demand-responsive motorcoach operators, and for small operators on October 28, 2002. Operators should consult 49 CFR part 37, subpart H, regarding the acquisition of accessible vehicles and the provision of accessible service to determine the applicable section that best describes their operating characteristics.

Specifications describing the design features of an accessible over-the-road bus are listed in 49 CFR part 38, subpart G.

C. Purpose

The purpose of the OTRB program is to improve mobility and shape America's future by ensuring that the transportation system is accessible,

integrated, and efficient, and offers flexibility of choices which is a key strategic goal of the DOT. OTRB Accessibility projects will improve mobility for individuals with disabilities by providing financial assistance to help make vehicles accessible and training to ensure that drivers and others are properly trained to use accessibility features as well as how to treat patrons with disabilities.

D. Vehicle and Service Definitions

An "over-the-road bus" is defined in 49 CFR 37.3 as a bus characterized by an elevated passenger deck located over a baggage compartment.

Intercity, fixed-route over-the-road bus service is regularly scheduled bus service for the general public, using an OTRB that operates with limited stops over fixed routes connecting two or more urban areas not in close proximity or connecting one or more rural communities with an urban area not in close proximity; has the capacity for transporting baggage carried by passengers; and makes meaningful connections with scheduled intercity bus service to more distant points. The application includes six criteria factors that will be reviewed to determine eligibility for a portion of the funding available to operators that qualify under this definition.

"Other" OTRB service means any other transportation using OTRBs, including local fixed-route service, commuter service, and charter or tour service (including tour or excursion service that includes features in addition to bus transportation such as meals, lodging, admission to points of interest or special attractions). While some commuter service may also serve the needs of some intercity fixed-route passengers, the statute includes commuter service in the definition of "other" service. Commuter service providers may apply for these funds, even though the services designed to meet the needs of commuters may also provide service to intercity fixed-route passengers on an incidental basis. If a commuter service provider can document that more than 50 percent of its passengers are using the service as intercity fixed-route service, the provider may apply for the funds designated for intercity fixed-route operators.

II. Award Information

Federal transit funds are available to intercity fixed-route providers and other OTRB providers at up to 90 percent of the project cost. A total of \$8,800,000 was appropriated for the program in FY 2011. Successful applicants will be

awarded grants. Typical grants under this program range from \$25,000 to \$180,000, with most grants being less than \$40,000, for lift equipment for a single vehicle.

III. Eligibility Information

A. Eligible Applicants

Grants will be made directly to operators of OTRBs. Intercity, fixed-route OTRB service providers may apply for the funds that were appropriated for intercity fixed-route providers in FY 2011. Applicants must establish eligibility as intercity fixed-route providers by meeting established criteria on six factors identified in the application. Other OTRB service providers, including operators of local fixed-route service, commuter service, and charter or tour service may apply for the funds that were appropriated in FY 2011 for these providers. OTRB operators who provide both intercity, fixed-route service and another type of service, such as commuter, charter or tour, may apply for both categories of funds with a single application. Private for-profit operators of over-the-road buses are eligible to be direct applicants for this program. This is a departure from most other FTA programs for which the direct applicant must be a State or local public body. FTA does not award grants to public entities under this program.

Section 50 of FTA's Master Agreement, titled "Special Provisions for Over-the-Road Bus Accessibility Projects," incorporates the U.S. Department of Transportation's regulations implementing the Americans with Disabilities Act of 1990 (49 CFR part 37). Section 37.213 of the implementing regulation requires private OTRB operators to file annual submissions with the Federal Motor Carrier Safety Administration's (FMCSA) Office of Data Analysis and Administration. Because compliance with all applicable Federal laws is a term and condition of grant eligibility, applicants who are not in compliance with the FMCSA filing requirements will be ineligible to participate in this program.

B. Eligible Projects

Projects to finance the incremental capital and training costs of complying with DOT's OTRB accessibility rule (49 CFR part 37) are eligible for funding. Incremental capital costs eligible for funding include adding lifts, tie-downs, moveable seats, doors and training costs associated with using the accessibility features and serving persons with disabilities. Retrofitting vehicles with

such accessibility components is also an eligible expense. Please see Buy America section for further conditions of eligibility.

FTA may award funds for costs already incurred by the applicants. Any new wheelchair accessible vehicles delivered after June 8, 1998, the date that the TEA-21 became effective, are eligible for funding under the program. Vehicles of any age that have been retrofitted with lifts and other accessibility components after June 8, 1998, are also eligible for funding.

Eligible training costs are those required by the final accessibility rule as described in 49 CFR 37.209. These activities include training in proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, and handling and storage of mobility devices. The costs associated with developing training materials or providing training for local providers of OTRB services for these purposes are also eligible expenses.

FTA will not fund the incremental costs of acquiring used accessible OTRBs that were previously owned, as it may be impossible to verify whether or not FTA funds were already used to make the vehicles accessible. Also, it would be difficult to place a value on the accessibility features based upon the depreciated value of the vehicle. The legislative intent of this grant program is to increase the number of wheelchair accessible OTRBs available to persons with disabilities throughout the country. The purchase of previously-owned accessible vehicles, whether or not they were funded by FTA, does not further this objective of increasing the number of wheelchair accessible OTRBs.

FTA has sponsored the development of accessibility training materials for public transit operators. FTA-funded Project ACTION is a national technical assistance program to promote cooperation between the disability community and the transportation industry. Project ACTION provides training, resources and technical assistance to thousands of disability organizations, consumers with disabilities, and transportation operators. It maintains a resource center with up-to-date information on transportation accessibility. Project ACTION may be contacted at: Project ACTION,

1425 K Street NW., Suite 200, Washington, DC 20005, Phone: 1-800-659-6428 (TDD: (202) 347-7385), Internet address: <http://www.projectaction.org/>.

C. Cost Sharing or Matching

Federal transit funds are available to intercity fixed-route providers and other OTRB providers at up to 90 percent of the project cost. A 10 percent match is required.

IV. Application and Submission Information

A. Address To Request Application Package

Project proposals must be submitted electronically through <http://www.Grants.gov> and a synopsis of this announcement will be available in the "FIND" module. The mandatory SF424 Form must be completed. Use the Supplemental FTA form (Applicant and Proposal Profile) to address proposal content and evaluation criteria specified in this notice. The Supplemental FTA form can be found at <http://www.fta.dot.gov/otrb>.

B. Content and Form of Application Submission

Guidelines for Preparing Grant Application

The application should provide information on all items for which you are requesting funding in FY 2011. If you use another company's previous application as a guide, remember to modify all elements as appropriate to reflect your company's situation. The application must include a brief project narrative in the Standard Form 424, "Application for Federal Assistance", and a more substantive narrative in the Supplemental FTA form.

Application Content

- Applicant Information, This addresses basic identifying information, including:
 - a. Company name.
 - b. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.
 - c. Contact information for notification of project selection: contact name, address, email address, fax and phone number.
 - d. Description of services provided by company, including areas served.
 - e. For fixed-route carriers, whether you are a large (Class I, with gross annual transportation revenues of \$8.7 million or more) or small (gross transportation revenues of less than \$8.7 million annually) carrier.
 - f. Existing fleet and employee information, including number of over-the-road buses used for (1) Intercity fixed-route service, and (2) other service, and number of employees.
 - g. If you provide both intercity fixed-route service and another type of

service, such as commuter, charter or tour service, please provide an estimate of the proportion of your service that is intercity.

h. Description of your technical, legal, and financial capacity to implement the proposed project. Include evidence that you currently possess appropriate operating authority (e.g., DOT number if you operate interstate or identifier assigned by State if you do not operate interstate service).

• Project Information, Every application must:

a. Provide the Federal amount requested for each purpose for which funds are sought in the format in Appendix A.

b. Document matching funds, including amount and source.

c. Describe project, including components to be funded (e.g., lifts, tie-downs, moveable seats, or training).

d. Provide project timeline, including significant milestones such as date or contract for purchase of vehicle(s), and actual or expected delivery date of vehicles.

e. Address each of the five statutory evaluation criteria described in V.

f. If requesting funding for intercity service, provide evidence that:

1. The applicant provides scheduled, intercity, fixed route, over-the-road bus service that interlines with one or more scheduled, intercity bus operators. (Such evidence includes applicant's membership in the National Bus Traffic Association or participation in separate interline agreements, and participation in interline tariffs or price lists issued by, or on behalf of, scheduled, intercity bus operators with whom the applicant interlines); and

2. The applicant has obtained authority from the Federal Motor Carrier Safety Administration or the Interstate Commerce Commission to operate scheduled, intercity, fixed route service; and as many of the following as are applicable;

3. The applicant is included in Russell's Official National Motor Coach Guide showing that it provides regularly scheduled, fixed route OTRB service with meaningful connections with scheduled intercity bus service to more distant points.

4. The applicant maintains a Website showing routes and schedules of its regularly scheduled, fixed route OTRB service and its meaningful connections to other scheduled, intercity bus service.

5. The applicant maintains published schedules showing its regularly scheduled, fixed route OTRB service and its meaningful connections to other scheduled, intercity bus service.

6. The applicant participates in the International Registration Plan (IRP) apportionment program.

• Labor Information:

The Applicant agrees to comply with the terms and conditions of the Special Warranty for the Over-the-Road Bus Accessibility Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the project, and any alternative comparable arrangements specified by U.S. Department of Labor (DOL) for application to the Applicant's project, in accordance with DOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR part 215, and any revisions thereto. Any DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

Additional information regarding grants that require referral can be found on DOL's Web site: https://www.dol.gov/esa/olms/regs/compliance/redesign_2006/redesign2006_transitemplprotect.htm.

C. Submission Dates and Times

Complete proposals for the Over-the-Road Bus Program must be submitted electronically through the *Grants.gov* Web site by September 12, 2011.

Applicants are encouraged to begin the process of registration on the *Grants.gov* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. In addition to the mandatory SF424 Form that will be downloaded from *Grants.gov*, FTA requires applicants to complete the Supplemental FTA form to enter descriptive and data elements of individual program proposals for the Over-the-Road Bus Program. This supplemental form provides guidance and a consistent format for applicants to respond to the criteria outlined in this NOFA and is described in detail on the FTA Web site at <http://www.fta.dot.gov/otrb>. Applicants *must* use this Supplemental FTA form and attach it to their submission in *Grants.gov* to successfully complete the application process. Within 24–48 hours after submitting an electronic application, the applicant should receive an e-mail validation message from *Grants.gov*. The validation will state whether *Grants.gov* found any issues with the submitted application. As an additional notification, FTA's system will notify the applicant if there are any problems with the submitted Supplemental FTA form. If making a resubmission for any reason, include all original attachments

regardless of which attachments were updated. Complete instructions on the application process can be found at <http://www.fta.dot.gov/otrb>. Important: FTA urges applicants to submit their applications at least 72 hours prior to the due date to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

D. Intergovernmental Review

This program is not generally subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs." For more information, contact the State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's homepage at <http://www.whitehouse.gov/omb/grants/spoc.html>.

E. Funding Restrictions

Only applications from eligible recipients for eligible activities will be considered for funding (see Section III). Due to funding limitations, applicants that are selected for funding may receive less than the amount requested.

V. Evaluation Criteria

Project Evaluation Criteria—Projects will be evaluated according to the following criteria:

a. The identified need for OTRB accessibility for persons with disabilities in the areas served by the applicant.

b. The extent to which the applicant demonstrated innovative strategies and financial commitment to providing access to OTRBs to persons with disabilities.

c. The extent to which the OTRB operator acquired equipment required by DOT's over-the-road bus accessibility rule prior to the required time-frame in the rule.

d. The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant.

e. The impact of accessibility requirements on the continuation of OTRB service with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals.

Note: These are the statutory criteria upon which funding decisions will be made. In addition to these criteria, FTA may also consider other factors, such as the size of the applicant's fleet and the level of FTA funding previously awarded to applicants in prior years. Applicants will not be considered for funding as intercity fixed-route operators

unless they satisfy, at a minimum, the first two criteria and at least one of criteria three through six listed in the Project Information section of the application; these criteria are applicable to intercity fixed-route applicants.

VI. Selection Process and Award Administration Information

A. Review and Selection Process

Each application may be screened by a panel of members consisting of FTA headquarters and regional staff. Incomplete or non-responsive applications will be disqualified. Intercity fixed-route service providers must provide evidence that they meet at a minimum the first two criteria and at least one of the next three criteria set forth in Project Information, if funds are requested under this category (see Appendix A, 2, B). Applicants that do not qualify as intercity-fixed route operators may be considered for funding in the "other" category using the same application. FTA will make an effort to award every qualified applicant at least one lift.

B. Award Notices

FTA will screen all applications to determine whether all required eligibility elements, as described in Part III "Eligibility Information," are present. The FTA evaluation team will evaluate each application according to the criteria described in this announcement. FTA will notify all applicants, both those selected for funding and those not selected when the competitive selection process is complete. Projects selected for funding will be published in a **Federal Register** notice. Applicants selected for funding must then apply to the FTA regional office for the actual grant award, sign Certifications and Assurances, and execute a grant contract before funds can be drawn down.

C. Administrative and National Policy Requirements

1. Grant Requirements

Applicants selected for funding must include documentation necessary to meet the requirements of FTA's Nonurbanized Area Formula program (Title 49, United States Code, section 5311). Technical assistance regarding these requirements is available from each FTA regional office. The regional offices will contact those applicants selected for funding regarding procedures for making the required certifications and assurances to FTA before grants are made.

The authority for these requirements is provided by TEA-21, Public Law 105-178, June 9, 1998, as amended by the TEA-21 Restoration Act 105-206,

112 Stat. 685, July 22, 1998; 49 U.S.C. Section 5310, note; and DOT and FTA regulations and FTA Circulars.

2. Buy America

Under the OTRB Accessibility Grant Program, FTA's Buy America regulations, 49 CFR part 661, apply to the incremental capital costs of making vehicles accessible.

Generally, Buy America applies to all accessibility equipment acquired with FTA funds, *i.e.*, all of the manufacturing processes for the product take place in the United States. The lift, the moveable seats, and the securement devices will each be considered components for purposes of this program; accordingly, as components, each must be manufactured in the United States regardless of the origin of its respective subcomponents.

It should also be noted that FTA has issued a general public interest waiver for all purchases under the Federal "small purchase" threshold, which is currently \$100,000. (See 49 CFR 661.7, Appendix A(e)). Because Section 3038(b) of TEA-21, limited FTA financing to the incremental capital costs of compliance with DOT's OTRB accessibility rule, the small purchase waiver applies only to the incremental cost of the accessibility features. Where more than one bus is being made accessible, the grantee must calculate the incremental cost increase of the entire procurement when determining if the small purchase waiver applies. For example, if \$30,000 is the incremental cost for the accessibility features eligible under this program per bus (regardless of the Federal share contribution), then a procurement of three buses with a total such cost of \$90,000, would qualify for the small purchase waiver. No special application to FTA would be required.

The grantee must obtain a certification from the bus or component manufacturer that all items included in the incremental cost for which the applicant is applying for funds meet Buy America requirements. The Buy America regulations can be found at <http://www.fta.dot.gov/library/legal/buyamer/>.

3. Labor Protection

Section 3013(h) of SAFETEA-LU amended 49 U.S.C. Section 5311(j)(1) to permit the Secretary of Labor to utilize a special warranty that provides a fair and equitable arrangement to protect the interest of employees as set forth in 49 U.S.C. 5333(b). Pursuant to this authorization, the DOL amended its implementing regulations at 29 CFR part 215 (73 FR 47046, Aug. 13, 2008). On

October 1, 2008, DOL began using a revised special warranty for the Section 5311 program which is appropriate for use with OTRB grants. All OTRB grants awarded after October 1, 2008 will be subject to the special warranty for labor protective arrangements under the Section 5311 program, which will be incorporated by reference in the grant agreement.

4. Planning

Applicants are encouraged to notify the appropriate State Departments of Transportation and Metropolitan Planning Organizations (MPO) in areas likely to be served by equipment made accessible through funds made available in this program. Those organizations, in turn, should take appropriate steps to inform the public, and individuals requiring fully accessible services in particular, of operators' intentions to expand the accessibility of their services. Incorporation of funded projects in the plans and transportation improvement programs of states and metropolitan areas by States and MPOs also is encouraged, but is not required.

5. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. Certifications and Assurances for grants to be awarded under this program in FY 2011 are included in the FTA Certifications and Assurances for FY 2011 which were published in the **Federal Register** of November 2, 2010, and made available for electronic signature in FTA's grants system. Every applicant must submit Certification 01, "For Each Applicant." Each applicant for more than \$100,000 must provide both Certification 01, and, 02, the "Lobbying Certification."

6. Reporting

Post-award reporting requirements include submission of final Federal Financial Report and milestone report, or annual reports for grants remaining

open at the end of each Federal fiscal year (September 30). Documentation is required for payment.

VII. Agency Contact(s)

Contact the appropriate FTA Regional Administrator (Appendix B) for application-specific information and issues. For general program information, contact Blenda Younger, Office of Program Management, (202) 366-4345, e-mail: blenda.younger@dot.gov. A TDD is available at 1-800-877-8339 (TDD/FIRS).

Issued in Washington, DC, this 7th day of July, 2011.

Peter Rogoff,
Administrator.

Appendix A—Over-the-Road Bus Accessibility Program Project Proposal Application (Electronic Project Narrative)

(See Section IV.B of Federal Register announcement for detailed explanation of application content).

In addition to OMB Standard Form 424, Application For Federal Assistance, provide the following information on the Supplemental Form:

1. Applicant Information
 - A. Company Name:
 - B. DUNS Number:
 - C. For Notification of Project Selection Contact:
 - Name of Individual:
 - Address:
 - Fax:
 - Telephone number:
 - E-mail:
 - D. Describe Services Provided by Company, including Areas Served:
 - E. Intercity Fixed-Route Carriers:
 - Large/Class I (gross annual transportation revenues of \$8.7 Million or more).
 - Small (gross annual transportation revenues of less than \$8.7 Million).
 - F. Existing Fleet and Employee Information:
 - Total number of over-the-road buses in fleet.
 - Number of over-the-road buses in fleet used for intercity fixed-route service.
 - Number of over-the-road buses intercity-fixed-route service that currently have lifts.
 - Number of over-the-road buses in fleet used for Other Service, e.g., Charter, Tour, & Commuter.
 - Number of over-the-road buses used in "other" service that currently have lifts.

Number of Employees.

G. Estimate of the proportion of service, if any, that is intercity fixed-route ____ % of services is intercity fixed-route.

H. Describe your technical, legal, and financial capacity to implement the proposed project. Include evidence of operating authority.

2. Project Information

A. Federal Amount Requested (Up to 90% Federal Share):

Intercity Fixed Route Service:

\$ ____ for # ____ New Over-the-road Buses

\$ ____ for # ____ Retrofits

\$ ____ for # ____ Employees—

Training

Other Service (Commuter, Charter, or Tour)

\$ ____ for # ____ New Over-the-road Buses

\$ ____ for # ____ Retrofits

\$ ____ for # ____ Employees—

Training

B. If requesting funding for intercity service, provide evidence of any of the following that are applicable:

1. The applicant provides scheduled, intercity, fixed-route, over-the-road bus service that interlines with one or more scheduled, intercity bus operators. Such evidence includes applicant's membership in the National Bus Traffic Association or participation in separate interline agreements, and participation in interline tariffs or price lists issued by, or on behalf of, scheduled, intercity bus operators with whom the applicant interlines.

2. The applicant has obtained authority from the Federal Motor Carrier Safety Administration or the Interstate Commerce Commission to operate scheduled, intercity, fixed route service.

3. The applicant is included in Russell's Official National Motor Coach Guide showing that it provides regularly scheduled, fixed route OTRB service with meaningful connections with scheduled intercity bus service to more distant points.

4. The applicant maintains a website showing routes and schedules of its regularly scheduled, fixed-route OTRB service and its meaningful connections to other scheduled, intercity bus service.

5. The applicant maintains published schedules showing its regularly scheduled, fixed-route OTRB service and its meaningful connections to other scheduled, intercity bus service.

6. The applicant participates in the International Registration Plan (IRP) apportionment program.

C. Document Matching Funds, including Amount and Source.

D. Describe Project, including Components to be funded (i.e., lifts, tie-downs, moveable seats or training).

E. Provide Project Time Line, including significant milestones such as date of contract for purchase of vehicle(s), and actual or expected delivery date of vehicles.

F. Project Evaluation Criteria.

Provide information addressing the following criteria:

- The identified need for OTRB accessibility for persons with disabilities in the areas served by the applicant.
- The extent to which the applicant demonstrated innovative strategies and financial commitment to providing access to OTRBs to persons with disabilities.
- The extent to which the over-the-road bus operator acquired equipment required by DOT's OTRB accessibility rule prior to the required time frame in the rule.
- The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant.

• The impact of accessibility requirements on the continuation of OTRB service with particular consideration of the impact of the requirements on service to rural areas and for low income individuals.

G. Labor Information

• List labor organizations that may represent your employees and all labor organizations that represent the employees of any transit providers in the service area of the project.

• For each local of a nationally affiliated union, provide the name of the national organization and the number or other designation of the local union.

• For each independent labor organization, provide the local information, including: name of organization, address, contact person, phone and fax numbers.

• For transit employee unions in service area of project, provide information including: contact person, address, telephone number and fax number for your company and associated union information.

Appendix B

FTA REGIONAL AND METROPOLITAN OFFICES

Mary Beth Mello, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Brigid Hynes-Cherin, Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170.

States served: New Jersey, New York

New York Metropolitan Office, Region 2—New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.

Letitia Thompson, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Philadelphia Metropolitan Office, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070.

Washington, DC Metropolitan Office, 1990 K Street, NW, Room 510, Washington, DC 20006, Tel. 202–219–3562.

Yvette Taylor, Regional Administrator, Region 4—Atlanta, 230 Peachtree Street, NW, Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.

Marisol Simon, Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Chicago Metropolitan Office, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.

Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550. States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

Terry Rosapep, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.

Los Angeles Metropolitan Office, Region 9—Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.

Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954

States served: Alaska, Idaho, Oregon, and Washington.

APPENDIX C
FY 2011 Discretionary Programs Schedule

Initiative	Funding Availability	NOFA Publication Target	Application Deadline
SGR Initiative (Bus)	\$750,000,000	6/24/2011	7/29/2011
Livability Expansion Initiative	\$175,000,000	6/27/2011	7/29/2011
Alternatives Analysis	\$25,000,000		
Bus & Bus Facilities	\$150,000,000		
Sustainability Initiative	\$101,400,000	6/24/2011	8/23/2011
Clean Fuels Bus Program	\$51,500,000		
TIGGER III	\$49,900,000		
Other Programs	\$50,640,500		
Paul S. Sarbanes Transit in Parks	\$26,765,500	3/10/2011	5/9/2011
Tribal Transit	\$15,075,000	7/25/2011	9/26/2011
Over-the-Road-Bus	\$8,800,000	7/11/2011	9/12/2011

[FR Doc. 2011-17651 Filed 7-12-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 25, 2011. No comments were received.

DATES: Comments must be submitted on or before August 12, 2011.

FOR FURTHER INFORMATION CONTACT: Sheila Brown, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone:

202-366-5178; or *e-mail*:

Sheila.brown@dot.gov. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Automated Mutual-Assistance Vessel Rescue System (AMVER).

OMB Control Number: 2133-0025.

Type of Request: Extension of currently approved collection.

Affected Public: U.S.-flag and U.S. citizen-owned vessels that are required to respond under current statute and regulation.

Form(s): None.

Abstract: This collection of information is used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of search and rescue in the saving of lives at sea and for the marshalling of ships for national defense and safety purposes. This collection consists of vessels that transmit their positions through various electronic means.

Annual Estimated Burden Hours: 51,050 hours.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, *Attention:* MARAD Desk Officer. Alternatively,

comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov*.

Comments Are Invited On: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Dated: July 5, 2011.

By Order of the Maritime Administration.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011-17659 Filed 7-12-11; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review**

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below regarding motorcycles helmet labels has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 30, 2011 (76 FR 17746). The docket number is NHTSA–2011–0045. No comments were received.

DATES: Comments must be submitted on or before August 12, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Shashi Kuppa at U.S. Department of Transportation, NHTSA, 1200 New Jersey Avenue, SE., West Building Room W43–313, NVS–113, Washington, DC 20590. Ms. Shashi Kuppa's telephone number is (202) 366–3827 and fax number is (202) 366–7002.

SUPPLEMENTARY INFORMATION:**National Highway Traffic Safety Administration**

Title: 49 CFR 571.218, Motorcycle Helmets (Labeling).

OMB Control Number: 2127–0518.

Type of Request: Extension of a currently approved collection.

Abstract: The National Traffic Vehicle Safety statute at 49 U.S.C. subchapter II standards and compliance, sections 30111 and 30117, authorizes the issuance of Federal motor vehicle safety standards (FMVSS). The Secretary is authorized to issue, amend, and revoke such rules and regulations as he/she deems necessary. The Secretary is also authorized to require manufacturers to provide information to first purchasers of motor vehicles or motor vehicle equipment when the vehicle equipment is purchased, in the form of printed matter placed in the vehicle or attached to the motor vehicle or motor vehicle equipment.

Using this authority, the agency issued the initial FMVSS No. 218, "Motorcycle helmets," in 1974.

Motorcycle helmets are devices used to protect motorcyclists from head injury in motor vehicle crashes. FMVSS No. 218 S5.6 requires that each helmet shall be labeled permanently and legibly in a manner such that the label(s) can be read easily without removing padding or any other permanent part.

Affected Public: Motorcycle helmet manufacturers.

Estimated Burden Hours: 5,000 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments to OMB are most effective if received by OMB within 30 days of publication.

Issued on: July 7, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–17643 Filed 7–12–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****Application Filing Requirements**

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 12, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at <http://www.reginfo.gov/public/do/PRAMain>.

ADDRESSES: Send comments, referring to the collection by title of the proposal or

by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, or by e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, send an e-mail to public.info@ots.treas.gov.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, ira.mills@ots.treas.gov, or on (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Application Filing Requirements.

OMB Number: 1550–0056.

Form Number: N/A.

Description: OTS regulations require that applications, notices, or other filings must be submitted to the appropriate Regional Office of OTS. See 12 CFR 516.40(a). Section 516.40(a) requires the applicant to file the original application and the number of copies indicated on the applicable form with the applications filing division of the appropriate Regional Office. If the form does not indicate the number of copies the applicant must file or if OTS has not prescribed a form for the application, the applicant must file the original application and two copies. The applicant must caption the original application and all required copies with the type of filing and must include all exhibits and required documents with the original and the required copies. 12 CFR 516.30(b). If an application, notice, or other filing raises a significant issue of law or policy, or the form instructs

the applicant to file with OTS Headquarters, the applicant must also file copies of the application with the Applications Filing Room at OTS in Washington, DC. The applicant must file the number of copies with OTS Headquarters that are indicated on the applicable form. If the form does not indicate the number of copies, or if OTS has not prescribed a form for the application, the applicant must file three copies with OTS Headquarters. 12 CFR 516.40(b).

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,175.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 200 hours.

Clearance Officer: Ira L. Mills, (202) 906-6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: July 7, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011-17539 Filed 7-12-11; 8:45 am]

BILLING CODE 6720-01-P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for the United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding amendment to Policy Statement 1B1.10, effective November 1, 2011.

SUMMARY: The Sentencing Commission hereby gives notice of an amendment to a policy statement and commentary made pursuant to its authority under 28 U.S.C. 994(a) and (u). The Commission promulgated an amendment to Policy Statement 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) clarifying when, and to what extent, a sentencing reduction is considered consistent with the policy statement and therefore authorized under 18 U.S.C. 3582(c)(2). The amendment amends 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) (Policy Statement) in four ways. First, it expands the listing in 1B1.10(c) to include Amendment 750 (Parts A and C only) as an amendment that may be applied retroactively. Second, it amends 1B1.10 to change the limitations that apply in cases in which the term of

imprisonment was less than the minimum of the applicable guideline range at the time of sentencing. Third, it amends the commentary to 1B1.10 to address an application issue about what constitutes the “applicable guideline range” for purposes of 1B1.10. Fourth, it adds an application note to 1B1.10 to specify that the court shall use the version of 1B1.10 that is in effect on the date on which the court reduces the defendant’s term of imprisonment as provided by 18 U.S.C. 3582(c)(2).

DATES: The effective date of this policy statement and commentary amendment is November 1, 2011.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Office of Legislative and Public Affairs, 202-502-4502.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o), and specifies in what circumstances and by what amount sentences of imprisonment may be reduced if the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses pursuant to 28 U.S.C. 994(u).

Additional information may be accessed through the Commission’s Web site at <http://www.ussc.gov>.

Authority: 28 U.S.C. 994(a), (u).

Patti B. Saris,
Chair.

1. Amendment: Section 1B1.10(b) is amended in subdivision (2) by striking “*Limitations*” and inserting “*Limitation*”; in subdivision (2)(A) by striking “*In General*” and inserting “*Limitation*”; in subdivision (2)(B) by inserting “*for Substantial Assistance*” after “*Exception*”; by striking “original”; by inserting “pursuant to a government motion to reflect the defendant’s substantial assistance to authorities” after “of sentencing”; and by striking the last sentence.

Section 1B1.10(c) is amended by striking “and”; and by inserting “, and 750 (parts A and C only)” before the period at the end.

The Commentary to 1B1.10 captioned “Application Notes” is amended in Note 1(A) in the first sentence by inserting “(i.e., the guideline range that corresponds to the offense level and criminal history category determined

pursuant to 1B1.1(a), which is determined before consideration of any departure provision in the Guidelines Manual or any variance)” before the period; and in Note 1(B)(iii) by striking “original”.

The Commentary to 1B1.10 captioned “Application Notes” is amended in Note 3 in the first paragraph by striking “original” in both places; by striking “shall not” and inserting “may” in both places; by inserting “as provided in subsection (b)(2)(A),” after “Specifically,”; by inserting “no” before “less than the minimum”; by striking “41 to 51” and inserting “70 to 87”; by striking “41” and inserting “70”; by striking “30 to 37” and inserting “51 to 63”; by striking “to a term less than 30 months” and inserting “, but shall not reduce it to a term less than 51 months”; and by striking the second paragraph and inserting the following new paragraphs:

“If the term of imprisonment imposed was outside the guideline range applicable to the defendant at the time of sentencing, the limitation in subsection (b)(2)(A) also applies. Thus, if the term of imprisonment imposed in the example provided above was not a sentence of 70 months (within the guidelines range) but instead was a sentence of 56 months (constituting a downward departure or variance), the court likewise may reduce the defendant’s term of imprisonment, but shall not reduce it to a term less than 51 months.

Subsection (b)(2)(B) provides an exception to this limitation, which applies if the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing pursuant to a government motion to reflect the defendant’s substantial assistance to authorities. In such a case, the court may reduce the defendant’s term, but the reduction is not limited by subsection (b)(2)(A) to the minimum of the amended guideline range. Instead, as provided in subsection (b)(2)(B), the court may, if appropriate, provide a reduction comparably less than the amended guideline range. Thus, if the term of imprisonment imposed in the example provided above was 56 months pursuant to a government motion to reflect the defendant’s substantial assistance to authorities (representing a downward departure of 20 percent below the minimum term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing), a reduction to a term of imprisonment of 41 months (representing a reduction of

approximately 20 percent below the minimum term of imprisonment provided by the amended guideline range) would amount to a comparable reduction and may be appropriate.

The provisions authorizing such a government motion are 5K1.1 (Substantial Assistance to Authorities) (authorizing, upon government motion, a downward departure based on the defendant's substantial assistance); 18 U.S.C. 3553(e) (authorizing the court, upon government motion, to impose a sentence below a statutory minimum to reflect the defendant's substantial assistance); and Fed. R. Crim. P. 35(b) (authorizing the court, upon government motion, to reduce a sentence to reflect the defendant's substantial assistance)." and in the fifth paragraph, as redesignated by this amendment, by inserting "See subsection (b)(2)(C)." after "time served."

The Commentary to 1B1.10 captioned "Application Notes" is amended by redesignating Note 4 as Note 5 and inserting after Note 3 the following:

"4. *Application to Amendment 750 (Parts A and C Only)*.—As specified in subsection (c), the parts of Amendment 750 that are covered by this policy statement are Parts A and C only. Part A amended the Drug Quantity Table in 2D1.1 for crack cocaine and made related revisions to Application Note 10 to 2D1.1. Part C deleted the cross reference in 2D2.1(b) under which an offender who possessed more than 5 grams of crack cocaine was sentenced under 2D1.1."

The Commentary to 1B1.10 captioned "Application Notes" is amended by adding at the end the following:

"6. *Use of Policy Statement in Effect on Date of Reduction*.—Consistent with subsection (a) of 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing), the court shall use the version of this policy statement that is in effect on the date on which the court reduces the defendant's term of imprisonment as provided by 18 U.S.C. 3582(c)(2)."

The Commentary to 1B1.10 captioned "Background" is amended in the second paragraph by adding at the end as the last sentence the following:

"The Supreme Court has concluded that proceedings under section 3582(c)(2) are not governed by *United States v. Booker*, 543 U.S. 220 (2005), and this policy statement remains binding on courts in such proceedings. See *Dillon v. United States*, 130 S. Ct. 2683 (2010)."

Reason for Amendment: This amendment amends 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) (Policy

Statement) in four ways. First, it expands the listing in 1B1.10(c) to implement the directive in 28 U.S.C. 994(u) with respect to guideline amendments that may be considered for retroactive application. Second, it amends 1B1.10 to change the limitations that apply in cases in which the term of imprisonment was less than the minimum of the applicable guideline range at the time of sentencing. Third, it amends the commentary to 1B1.10 to address an application issue about what constitutes the "applicable guideline range" for purposes of 1B1.10. Fourth, it adds an application note to 1B1.10 to specify that the court shall use the version of 1B1.10 that is in effect on the date on which the court reduces the defendant's term of imprisonment as provided by 18 U.S.C. 3582(c)(2).

First, the Commission has determined, under the applicable standards set forth in the background commentary to 1B1.10, that Amendment 750 (Parts A and C only) should be included in 1B1.10(c) as an amendment that may be considered for retroactive application. Part A amended the Drug Quantity Table in 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) for crack cocaine and made related revisions to Application Note 10 to 2D1.1. Part C deleted the cross reference in 2D2.1(b) under which an offender who possessed more than 5 grams of crack cocaine was sentenced under 2D1.1.

Under the applicable standards set forth in the background commentary to 1B1.10, the Commission considers, among other factors, (1) the purpose of the amendment, (2) the magnitude of the change in the guideline range made by the amendment, and (3) the difficulty of applying the amendment retroactively. See 1B1.10, comment. (backg'd.). Applying those standards to Parts A and C of Amendment 750, the Commission determined that, among other factors:

(1) The purpose of Parts A and C of Amendment 750 was to account for the changes in the statutory penalties made by the Fair Sentencing Act of 2010, Public Law 111–220, 124 Stat. 2372, for offenses involving cocaine base ("crack cocaine"). See USSG App. C, Amend. 750 (Reason for Amendment). The Fair Sentencing Act of 2010 did not contain a provision making the statutory changes retroactive. The Act directed the Commission to promulgate guideline amendments implementing the Act. The guideline amendments implementing the Act have the effect of reducing the term of imprisonment

recommended in the guidelines for certain defendants, and the Commission has a statutory duty to consider whether the resulting guideline amendments should be made available for retroactive application. See 28 U.S.C. 994(u) ("If the Commission reduces the term of imprisonment recommended in the guidelines * * * it shall specify in what circumstances and by what amount sentences of prisoners * * * may be reduced."). In carrying out its statutory duty to consider whether to give Amendment 750 retroactive effect, the Commission also considered the purpose of the underlying statutory changes made by the Act. Those statutory changes reflect congressional action consistent with the Commission's long-held position that the then-existing statutory penalty structure for crack cocaine "significantly undermines the various congressional objectives set forth in the Sentencing Reform Act and elsewhere" (see USSG App. C, Amend. 706 (Reason for Amendment)). The Fair Sentencing Act of 2010 specified in its statutory text that its purpose was to "restore fairness to Federal cocaine sentencing" and provide "cocaine sentencing disparity reduction". See 124 Stat. at 2372.

It is important to note that the inclusion of Amendment 750 (Parts A and C) in 1B1.10(c) only allows the guideline changes to be considered for retroactive application; it does not make any of the statutory changes in the Fair Sentencing Act of 2010 retroactive.

(2) The number of cases potentially involved is substantial, and the magnitude of the change in the guideline range is significant. As indicated in the Commission's analysis of cases potentially eligible for retroactive application of Parts A and C of Amendment 750, approximately 12,000 offenders would be eligible to seek a reduced sentence and the average sentence reduction would be approximately 23 percent.

(3) The administrative burdens of applying Parts A and C of Amendment 750 retroactively are manageable. This determination was informed by testimony at the Commission's June 1, 2011, public hearing on retroactivity and by other public comment received by the Commission on retroactivity. The Commission also considered the administrative burdens that were involved when its 2007 crack cocaine amendments were applied retroactively. See USSG App. C, Amendments 706 and 711 (amending the guidelines applicable to crack cocaine, effective November 1, 2007) and Amendment 713 (expanding the listing in 1B1.10(c) to include Amendments 706 and 711 as

amendments that may be considered for retroactive application, effective March 3, 2008). The Commission received comment and testimony indicating that those burdens were manageable and that motions routinely were decided based on the filings, without the need for a hearing or the presence of the defendant, and did not constitute full resentencings. The Commission determined that applying Parts A and C of Amendment 750 would likewise be manageable, given that, among other things, significantly fewer cases would be involved. As indicated in the Commission's Preliminary Crack Cocaine Retroactivity Report (April 2011 Data) regarding retroactive application of the 2007 crack cocaine amendments, approximately 25,500 offenders have requested a sentence reduction pursuant to retroactive application of the 2007 crack cocaine amendments and approximately 16,500 of those requests have been granted.

In addition, public safety will be considered in every case because 1B1.10 requires the court, in determining whether and to what extent a reduction in the defendant's term of imprisonment is warranted, to consider the nature and seriousness of the danger to any person or the community that may be posed by such a reduction. *See* 1B1.10, comment. (n.1(B)(ii)).

Second, in light of public comment and testimony and recent case law, the amendment amends 1B1.10 to change the limitations that apply in cases in which the term of imprisonment was less than the minimum of the applicable guideline range at the time of sentencing. Under the amendment, the general limitation in subsection (b)(2)(A) continues to be that the court shall not reduce the defendant's term of imprisonment to a term that is less than the minimum of the amended guideline range. The amendment restricts the exception in subsection (b)(2)(B) to cases involving a government motion to reflect the defendant's substantial assistance to authorities (*i.e.*, under 5K1.1 (Substantial Assistance to Authorities), 18 U.S.C. 3553(e), or Fed. R. Crim. P. 35(b)). For those cases, a reduction comparably less than the amended guideline range may be appropriate.

The version of 1B1.10 currently in effect draws a different distinction for cases in which the term of imprisonment was less than the minimum of the applicable guideline range, one rule for downward departures (stating that "a reduction comparably less than the amended guideline range * * * may be appropriate") and another rule for

variances (stating that "a further reduction generally would not be appropriate"). *See* 1B1.10(b)(2)(B). The Commission has received public comment and testimony indicating that this distinction has been difficult to apply and has prompted litigation. The Commission has determined that, in the specific context of 1B1.10, a single limitation applicable to both departures and variances furthers the need to avoid unwarranted sentencing disparities and avoids litigation in individual cases. The limitation that prohibits a reduction below the amended guideline range in such cases promotes conformity with the amended guideline range and avoids undue complexity and litigation.

Nonetheless, the Commission has determined that, in a case in which the term of imprisonment was below the guideline range pursuant to a government motion to reflect the defendant's substantial assistance to authorities (*e.g.*, under 5K1.1), a reduction comparably less than the amended guideline range may be appropriate. Section 5K1.1 implements the directive to the Commission in its organic statute to "assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed * * * to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense." *See* 28 U.S.C. 994(n). For other provisions authorizing such a government motion, *see* 18 U.S.C. 3553(e) (authorizing the court, upon government motion, to impose a sentence below a statutory minimum to reflect a defendant's substantial assistance); Fed. R. Crim. P. 35(b) (authorizing the court, upon government motion, to reduce a sentence to reflect a defendant's substantial assistance). The guidelines and the relevant statutes have long recognized that defendants who provide substantial assistance are differently situated than other defendants and should be considered for a sentence below a guideline or statutory minimum even when defendants who are otherwise similar (but did not provide substantial assistance) are subject to a guideline or statutory minimum. Applying this principle when the guideline range has been reduced and made available for retroactive application under section 3582(c)(2) appropriately maintains this distinction and furthers the purposes of sentencing.

Third, the amendment amends the commentary to 1B1.10 to address an application issue. Circuits have conflicting interpretations about when,

if at all, the court applies a departure provision before determining the "applicable guideline range" for purposes of 1B1.10. The First, Second, and Fourth Circuits have held that, for 1B1.10 purposes, at least some departures (*e.g.*, departures under 4A1.3 (Departures Based on Inadequacy of Criminal History Category) (Policy Statement)) are considered before determining the applicable guideline range, while the Sixth, Eighth, and Tenth Circuits have held that "the only applicable guideline range is the one established before any departures". *See United States v. Guyton*, 636 F.3d 316, 320 (7th Cir. 2011) (collecting and discussing cases; holding that departures under 5K1.1 are considered after determining the applicable guideline range but declining to address whether departures under 4A1.3 are considered before or after). Effective November 1, 2010, the Commission amended 1B1.1 (Application Instructions) to provide a three-step approach in determining the sentence to be imposed. *See* USSG App. C, Amend. 741 (Reason for Amendment). Under 1B1.1 as so amended, the court first determines the guideline range and then considers departures. *Id.* ("As amended, subsection (a) addresses how to apply the provisions in the *Guidelines Manual* to properly determine the kinds of sentence and the guideline range. Subsection (b) addresses the need to consider the policy statements and commentary to determine whether a departure is warranted."). Consistent with the three-step approach adopted by Amendment 741 and reflected in 1B1.1, the amendment adopts the approach of the Sixth, Eighth, and Tenth Circuits and amends Application Note 1 to clarify that the applicable guideline range referred to in 1B1.10 is the guideline range determined pursuant to 1B1.1(a), which is determined before consideration of any departure provision in the *Guidelines Manual* or any variance.

Fourth, the amendment adds an application note to 1B1.10 to specify that, consistent with subsection (a) of 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing), the court shall use the version of 1B1.10 that is in effect on the date on which the court reduces the defendant's term of imprisonment as provided by 18 U.S.C. 3582(c)(2). Finally, the amendment amends the commentary to 1B1.10 to refer to *Dillon v. United States*, 130 S. Ct. 2683 (2010). In *Dillon*, the Supreme Court concluded that proceedings under section 3582(c)(2) are not governed by *United States v. Booker*, 543 U.S. 220

(2005), and that 1B1.10 remains binding on courts in such proceedings.

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Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; California; 2008 San Joaquin Valley PM_{2.5} Plan and 2007 State Strategy; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2010-0516; FRL-9434-8]

Approval and Promulgation of Implementation Plans; California; 2008 San Joaquin Valley PM_{2.5} Plan and 2007 State Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part state implementation plan (SIP) revisions submitted by California to provide for attainment of the 1997 fine particulate matter (PM_{2.5}) national ambient air quality standards in the San Joaquin Valley (SJV). These SIP revisions are the SJV 2008 PM_{2.5} Plan (revised 2010 and 2011) and SJV-related provisions of the 2007 State Strategy (revised 2009 and 2011). EPA is proposing to approve the emissions inventories; air quality modeling; the reasonably available control measures/reasonably available control technology, reasonable further progress, and attainment demonstrations; and the transportation conformity motor vehicle emissions budgets. EPA is also proposing to grant California's request to extend the attainment deadline for the SJV to April 5, 2015 and to approve commitments to measures and reductions by the SJV Air Pollution Control District and the California Air Resources Board. Finally, it is proposing to disapprove the SIP's contingency measures. This proposed rule amends EPA's November 30, 2010 proposed rule (75 FR 74518) on the SJV 2008 PM_{2.5} Plan and 2007 State Strategy.

DATES: Any comments must be received on or before August 12, 2011.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2010-0516, by one of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

- *E-mail:* wicher.frances@epa.gov.
- *Mail or deliver:* Frances Wicher, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI)

or other information for which disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some may be publicly available only at the hard copy location (e.g., copyrighted material) and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Copies of the SIP materials are also available for inspection at the following locations:

- California Air Resources Board, 1001 I Street, Sacramento, California 95812.
- San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, California 93726.

The SIP materials are also electronically available at: http://www.valleyair.org/Air_Quality_Plans/PM_Plans.htm and <http://www.arb.ca.gov/planning/sip/sip.htm>.

FOR FURTHER INFORMATION CONTACT:

Frances Wicher, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region 9, (415) 972-3957, wicher.frances@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we", "us" and "our" refer to EPA.

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I. The PM_{2.5} NAAQS and the San Joaquin Valley PM_{2.5} Nonattainment Area

On July 18, 1997 (62 FR 36852), EPA established new national ambient air quality standards (NAAQS) for PM_{2.5}, particulate matter with a diameter of 2.5 microns or less, including annual standards of 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a 3-year average of annual mean PM_{2.5} concentrations and 24-hour (daily) standards of 65 $\mu\text{g}/\text{m}^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. 40 CFR 50.7. EPA established these standards after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to PM_{2.5} concentrations above the levels of these standards.

Epidemiological studies have shown statistically significant correlations between elevated PM_{2.5} levels and premature mortality. Other important health effects associated with PM_{2.5} exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function and increased respiratory symptoms, as well as new evidence for more subtle indicators of cardiovascular health. Individuals particularly sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children. See EPA, *Air Quality Criteria for Particulate Matter*, No. EPA/600/P-99/002aF and EPA/600/P-99/002bF, October 2004.

PM_{2.5} can be emitted directly into the atmosphere as a solid or liquid particle (primary PM_{2.5} or direct PM_{2.5}) or can be formed in the atmosphere as a result of various chemical reactions from precursor emissions of nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia (secondary PM_{2.5}). See 72 FR 20586, 20589 (April 25, 2007).

Following promulgation of a new or revised NAAQS, EPA is required by Clean Air Act (CAA) section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On January 5, 2005, EPA published initial air quality designations for the 1997 PM_{2.5} NAAQS, using air quality monitoring data for the three-year periods of 2001–2003 or 2002–2004. 70

FR 944. These designations became effective on April 5, 2005.¹

EPA designated the San Joaquin Valley (SVJ) nonattainment for both the 1997 annual and 24-hour PM_{2.5} standards. 40 CFR § 81.305. The SVJ PM_{2.5} nonattainment area is home to 4 million people and is the nation's leading agricultural area. Stretching over 250 miles from north to south and averaging 80 miles wide, it is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east. It encompasses over 23,000 square miles and includes all or part of eight counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and the valley portion of Kern. For a precise description of the geographic boundaries of the San Joaquin Valley PM_{2.5} nonattainment area, see 40 CFR 81.305. The local air district with primary responsibility for developing a plan to attain the PM_{2.5} NAAQS in this area is the San Joaquin Valley Unified Air Pollution Control District (SVJUPCD or District).

Ambient annual and 24-hour PM_{2.5} levels in the urban Bakersfield area in the southern SVJ are the highest recorded in the United States at 21.2 $\mu\text{g}/\text{m}^3$ and 65 $\mu\text{g}/\text{m}^3$, respectively, for the 2008–2010 period.² These values have declined significantly since 2001. See Figures IB–1 and IB–2 in the technical support document (TSD) for this proposal.

The levels and composition of ambient PM_{2.5} in the SVJ differ by season. 2008 PM_{2.5} Plan, Figures H–4 and H–5. Higher PM_{2.5} concentrations occur during the winter, between late November and February, when ambient PM_{2.5} is dominated by ammonium nitrate (a secondary particulate formed from nitrogen oxides (NO_x) and

ammonia emissions) and directly-emitted particulates, such as wood smoke. During the winter, the SVJ experiences extended periods of stagnant weather with cold foggy conditions which are conducive to the formation of ammonium nitrate and which encourage wood burning. During the summer, PM_{2.5} levels generally remain below 15 $\mu\text{g}/\text{m}^3$, the level of the annual standards. 2008 PM_{2.5} Plan, Figures H–6 and H–7.

II. California State Implementation Plan Submittals To Address PM_{2.5} Nonattainment in the San Joaquin Valley

A. California's SIP Submittals

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a state implementation plan (SIP) under title 1, part D of the CAA. This SIP must include, among other things, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable but no later than the date required by the CAA. Under CAA section 172(b), a state has up to three years after an area's designation as nonattainment to submit its SIP to EPA. For the 1997 PM_{2.5} NAAQS, these SIPs were due April 5, 2008. 40 CFR 51.1002(a).

California has made five SIP submittals to address the CAA's PM_{2.5} planning requirements in the San Joaquin Valley. The two principal ones are the SJVAPCD's 2008 PM_{2.5} Plan (2008 PM_{2.5} Plan or Plan) and the California Air Resources Board's (CARB's) State Strategy for California's 2007 State Implementation Plan (2007 State Strategy). Together the 2008 PM_{2.5} Plan and the State Strategy present a comprehensive and innovative strategy for attaining the 1997 PM_{2.5} standards in the SVJ.

In addition to these submittals, the District and State have also submitted numerous rules that contribute to improving air quality in the San Joaquin Valley. See Appendices A and B of the TSD for this proposal.

1. SJV 2008 PM_{2.5} Plan

The 2008 PM_{2.5} Plan was adopted by the District's Governing Board on April 30, 2008 and by CARB on May 22, 2008 and submitted to EPA on June 30, 2008.³ It includes an attainment

¹ On October 17, 2006, EPA strengthened the 24-hour PM_{2.5} NAAQS by lowering the level to 35 $\mu\text{g}/\text{m}^3$. At the same time, it retained the level of the annual PM_{2.5} standards at 15.0 $\mu\text{g}/\text{m}^3$. 71 FR 61144. On November 13, 2009, EPA designated areas, including the SVJ, with respect to the revised 24-hour NAAQS. 74 FR 58688. California is now required to submit an attainment plan for the 35 $\mu\text{g}/\text{m}^3$ 24-hour standards no later than 3 years after the effective date of the designation, that is, no later than December 14, 2012. In this preamble, all references to the PM_{2.5} NAAQS, unless otherwise specified, are to the 1997 24-hour PM_{2.5} standards of 65 $\mu\text{g}/\text{m}^3$ and annual standards of 15 $\mu\text{g}/\text{m}^3$ as codified in 40 CFR 50.7.

² See EPA, Air Quality System, Design Value Report, June 1, 2011. These values are the highest design values in the SVJ. A design value is an ambient concentration calculated using a specific methodology from monitored air quality data and is used to compare an area's air quality to a NAAQS. The methodologies for calculating design values for the annual and 24-hour PM_{2.5} NAAQS are found in 40 CFR part 50 Appendix N, Sections 1(c)(1) and (c)(2), respectively.

³ See SJVUPCD Governing Board Resolution: In the Matter of Adopting the San Joaquin Valley Unified Air Pollution Control District 2008 PM_{2.5} Plan, April 30, 2008 (SVJUPCD Governing Board Resolution), CARB Resolution No. 08–28, May 22, 2008; and letter, James N. Goldstene, Executive Officer, CARB to Wayne Nastri, Regional

demonstration, commitments by the District to adopt control measures to achieve emissions reductions from sources under its jurisdiction (primarily stationary sources), and motor vehicle emissions budgets (MVEB) used for transportation conformity purposes. The attainment demonstration includes air quality modeling, a reasonable further progress (RFP) plan, an analysis of reasonably available control measures/ reasonably available control technology (RACM/RACT), base year and projected year emissions inventories, and contingency measures. The 2008 PM_{2.5} Plan also includes the District's demonstration that attainment of the PM_{2.5} standards in the SJV will require significant reductions in direct PM_{2.5} and NO_x emissions (25 percent and 50 percent from 2005 levels, respectively) in addition to reductions in SO_x emissions, that the most expeditious date for attaining the 1997 PM_{2.5} NAAQS in the San Joaquin Valley is April 5, 2015, and that all controls necessary for attainment by that date will be in place by the attainment year of 2014.⁴ On September 15, 2010, CARB submitted a minor revision to the 2008 PM_{2.5} Plan's control strategy to extend the adoption date for one control measure.⁵

2. CARB 2007 State Strategy

To demonstrate attainment, the 2008 PM_{2.5} Plan relies in part on measures in CARB's 2007 State Strategy. The 2007 State Strategy was adopted on September 27, 2007 and submitted to EPA on November 16, 2007.⁶ It describes CARB's overall approach to addressing, in conjunction with local plans, attainment of both the 1997 PM_{2.5} and 8-hour ozone NAAQS not only in the San Joaquin Valley but also in California's other nonattainment areas such as the South Coast Air Basin. It also includes CARB's commitments to propose 15 defined State measures⁷ and

to obtain specific amounts of aggregate emissions reductions of direct PM_{2.5} and NO_x in the SJV from sources under the State's jurisdiction, which are primarily on- and off-road motor vehicles and engines.

On August 12, 2009, CARB submitted the "Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP Reflecting Implementation of the 2007 State Strategy," dated March 24, 2009, adopted April 24, 2009 (2009 State Strategy Status Report)⁸ which updates the 2007 State Strategy to reflect its implementation during 2007 and 2008.

In today's proposal, we are only evaluating those portions of the 2007 State Strategy and its revisions (including the 2011 revisions described below) that are relevant for attainment of the PM_{2.5} standards in the San Joaquin Valley.

3. CARB 2011 Progress Report

On May 18, 2011, CARB submitted the "Progress Report on Implementation of PM_{2.5} State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions," dated March 29, 2011 and adopted April 28, 2011 (2011 Progress Report). This submittal, which updates both the 2007 State Strategy and SJV 2008 PM_{2.5} Plan, shows that both CARB and the District have made significant progress in meeting their commitments to adopt measures and to reduce emissions. More specifically, it updates CARB's rulemaking calendar in the 2007 State Strategy (as revised in 2009) to reflect the current status of CARB's adopted measures and to change the expected action dates for several measures. It also updates the RFP demonstration, contingency measures, and transportation conformity MVEB in the 2008 PM_{2.5} Plan to reflect rule adoptions, changes to activity and emissions factors for certain source categories, and the impact on projected future emissions levels in the SJV of the recent economic recession.⁹

and the California Department of Pesticide Regulation (VOC reductions from pesticide use). See 2007 State Strategy, pp. 64–65 and CARB Resolution 7–28, Attachment B, p. 8.

⁸ See CARB Resolution No. 09–34, April 21, 2009, with attachments and letter, James N. Goldstene, Executive Officer, CARB, to Laura Yoshii, Acting Regional Administrator, EPA Region 9, August 12, 2009 with enclosures. Only pages 11–27 of the 2009 State Strategy Status Report are submitted as a SIP revision. The balance is for informational purposes only. See Attachment A to the CARB Resolution No. 09–34.

⁹ On June 21, 2011, CARB posted to its Web site technical revisions to the updated MVEB in the 2011 Progress Report. See <http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm>. We discuss these revisions in the section on MVEB below.

The District has also prepared a report documenting its progress in implementing the 2008 PM_{2.5} Plan. See SJVUAPCD, 2008 PM_{2.5} Plan Progress Report, draft March 2011 (SJV PM_{2.5} Progress Report). This report, which is informational only and does not include any revisions to the SIP, was posted for public comment in March and was presented to the District's Governing Board at its June 2011 meeting.

Future references in this proposal to the SJV 2008 PM_{2.5} Plan and the 2007 State Strategy will be to the Plan as revised in 2010 and 2011 and the Strategy as revised in 2009 and 2011, respectively, unless otherwise noted.

B. CAA Procedural Requirements for SIP Submittals

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the 2008 PM_{2.5} Plan. The District conducted public workshops, provided public comment periods, and held a public hearing prior to the adoption of the Plan on April 30, 2008. See 2008 PM_{2.5} Plan, Appendix J and SJVUAPCD Governing Board Resolution, p. 3. CARB provided the required public notice and opportunity for public comment prior to its May 22, 2008 public hearing on the Plan. See CARB Resolution No. 08–28. The District also provided the required public notice and hearing on the 2010 revision to the Plan. See SJVUAPCD Governing Board Resolution No. 10–06–18.

CARB conducted public workshops, provided public comment periods, and held a public hearing prior to the adoption of the 2007 State Strategy on September 27, 2007. See CARB Resolution No. 07–28. CARB also provided the required public notice, opportunity for public comment, and a public hearing prior to its April 24, 2009 adoption of the 2009 State Strategy Status Report and its April 28, 2011 adoption of the 2011 Progress Report.

Administrator, EPA Region 9, June 30, 2008, with enclosures.

⁴ While the applicable attainment date for PM_{2.5} areas with a full five-year extension is April 5, 2015, reductions must be implemented by 2014 to achieve attainment by that date. See 40 CFR 51.1007(b). We, therefore, refer to 2014 as the attainment year and April 5, 2015 as the attainment date.

⁵ See letter, James N. Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, September 15, 2010, with enclosures.

⁶ See CARB Resolution No. 07–28, September 27, 2007 with attachments and letter, James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, November 16, 2007, with enclosures.

⁷ The 2007 State Strategy also includes measures to be implemented by the California Bureau of Automotive Repair (Smog Check improvements)

See CARB Resolution No. 09–34 and CARB Resolution No. 11–24.

The SIP submittals include proof of publication for notices of District and CARB public hearings, as evidence that all hearings were properly noticed. We find, therefore, that each of the five submittals that comprise the SJV PM_{2.5} SIP meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan that EPA has not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the date of submittal. EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V.

The June 30, 2008 submittal of the 2008 PM_{2.5} Plan became complete by operation of law on December 30, 2008. We determined that the 2010 revision to the Plan was complete on September 23, 2010.¹⁰ The November 16, 2007 submittal of the 2007 State Strategy and the August 12, 2009 submittal of the 2009 revisions to the Strategy became complete by operation of law on May 16, 2008 and February 12, 2010, respectively. We determined that the 2011 revision to the Plan was complete on June 13, 2011.¹¹

III. EPA's 2010 Proposed Action on the SJV PM_{2.5} SIP

This is the second time that EPA has proposed action on California's SIP to address attainment of the 1997 PM_{2.5} standards in the SJV. On November 30, 2010 (75 FR 74518), EPA proposed to approve in part and disapprove in part the 2008 PM_{2.5} Plan and the related portions of the 2007 State Strategy.

Specifically, we proposed to approve the emissions inventories as meeting the applicable requirements of the CAA and PM_{2.5} implementation rule in 40 CFR part 41, subpart Z. We also proposed to approve the District's and CARB's commitments to adopt and implement specific measures and to achieve specific aggregate emissions reductions because their approval would strengthen the SIP.

In addition, we proposed to find that volatile organic compounds (VOC) are a PM_{2.5} attainment plan precursor for the 1997 PM_{2.5} NAAQS in the SJV and therefore needed to be addressed in the 2008 PM_{2.5} SIP's RACM/RACT, RFP,

and attainment demonstrations and in other PM_{2.5} SIP control requirements, such as contingency measures. As submitted prior to our November 2010 proposal, the Plan did not treat VOC as an attainment plan precursor but did contain information indicating that significant reductions in VOC emissions could significantly reduce ambient PM_{2.5} concentrations in the SJV.

We proposed to disapprove the air quality modeling analysis on which the 2008 PM_{2.5} Plan's RACM/RACT, RFP, and attainment demonstrations and the State's attainment date extension request were based because the Plan did not include sufficient documentation and analyses for EPA to determine the modeling's adequacy.

Based on our proposed finding that VOC should be a PM_{2.5} attainment plan precursor and our proposed disapproval of the air quality modeling, we proposed to disapprove the 2008 PM_{2.5} Plan's RACM/RACT, RFP, and attainment demonstrations and the contingency measures as not meeting the applicable requirements of the CAA and PM_{2.5} implementation rule. We proposed to disapprove the attainment demonstration for the additional reason that it relied too extensively on enforceable commitments to reduce emissions in place of fully-adopted and submitted rules. We also proposed to disapprove the transportation conformity MVEB for the RFP milestone years of 2009 and 2012 and the attainment year of 2014 because they were derived from unapprovable RFP and attainment demonstrations. Finally, based also on our proposed finding on VOC and our proposed disapproval of the air quality modeling as well as our proposed disapproval of the RACM/RACT and attainment demonstrations, we proposed to not grant the State's request to extend the attainment date for the PM_{2.5} NAAQS in the SJV to April 5, 2015.

During the comment period for the November 2010 proposal, we received five comment letters from the public as well as comment letters from CARB and the District. Subsequent to the close of the comment period, CARB adopted and submitted revisions to the SJV PM_{2.5} Plan and 2007 State Strategy After considering information contained in the comment letters and these supplemental SIP submittals, we have substantially amended our November 2010 proposed action as described below. EPA will consider all significant comments submitted in response to both its November 2010 proposal and today's proposal before taking final action on the SJV PM_{2.5} SIP. However, EPA strongly encourages those who

submitted comments on the November 2010 proposal to submit revised comments reflecting today's amended proposal during the comment period on this amended proposal.

IV. CAA and Regulatory Requirements for PM_{2.5} Attainment SIPs

EPA is implementing the 1997 PM_{2.5} NAAQS under Title 1, Part D, subpart 1 of the CAA, which includes section 172, "Nonattainment plan provisions." Section 172(a)(2) requires that a PM_{2.5} nonattainment area attain the NAAQS "as expeditiously as practicable" but no later than five years from the date of the area's designation as nonattainment. This section also allows EPA to grant up to a five-year extension of an area's attainment date based on the severity of the area's nonattainment and the availability and feasibility of controls. EPA designated the SJV as nonattainment for the 1997 PM_{2.5} NAAQS effective April 5, 2005, and thus the applicable attainment date is no later than April 5, 2010 or, should EPA grant a full five-year extension, no later than April 5, 2015.

Section 172(c) contains the general statutory planning requirements applicable to all nonattainment areas, including the requirements for emissions inventories, RACM/RACT, attainment demonstrations, RFP demonstrations, and contingency measures.

On April 25, 2007, EPA issued the Clean Air Fine Particle Implementation Rule for the 1997 PM_{2.5} NAAQS. 72 FR 20586, codified at 40 CFR part 51, subpart Z (PM_{2.5} implementation rule). The PM_{2.5} implementation rule and its preamble address the statutory planning requirements for emissions inventories, RACM/RACT, attainment demonstrations including air quality modeling requirements, RFP demonstrations, and contingency measures. This rule also addresses other matters such as which PM_{2.5} precursors must be addressed by the state in its attainment SIP and applicable attainment dates.¹² We discuss each of

¹² In June 2007, a petition to the EPA Administrator was filed on behalf of several public health and environmental groups requesting reconsideration of four provisions in the PM_{2.5} implementation rule. See Earthjustice, Petition for Reconsideration, "In the Matter of Final Clean Air Fine Particle Implementation Rule," June 25, 2007. These provisions are (1) The presumption that compliance with the Clean Air Interstate Rule satisfies the NO_x and SO₂ RACT requirements for electric generating units; (2) the deferral of the requirement to establish emission limits for condensable particulate matter (CPM) until January 1, 2011; (3) revisions to the criteria for analyzing the economic feasibility of RACT; and (4) the use of out-of-area emissions reductions to demonstrate

Continued

¹⁰ Letter, Deborah Jordan, EPA-Region 9 to James Goldstone, CARB, September 23, 2010.

¹¹ Letter, Deborah Jordan, EPA-Region 9 to James Goldstone, CARB, June 13, 2011.

these CAA and regulatory requirements for PM_{2.5} attainment plans in more detail below.

V. Review of the SJV 2008 PM_{2.5} Plan and the SJV Portion of the Revised 2007 State Strategy

We summarize our evaluation of the SJV PM_{2.5} SIP's compliance with applicable CAA and EPA regulatory requirements below. Our detailed evaluation can be found in the TSD for this proposal which is available online at www.regulations.gov in docket number EPA-R09-OAR-2010-0516 or from the EPA contact listed at the beginning of this notice.

A. Emissions Inventories

1. Requirements for Emissions Inventories

CAA section 172(c)(3) requires a state to submit a plan provision that includes a "comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant." The PM_{2.5} implementation rule requires a state to include direct PM_{2.5} emissions and emissions of all PM_{2.5} precursors in this inventory, even if it has determined that control of any of these precursors is not necessary for expeditious attainment. 40 CFR 51.1008(a)(1) and 72 FR 20586 at 20648. Direct PM_{2.5} includes condensable particulate matter. 40 CFR 51.1000. PM_{2.5} precursors are NO_x, SO₂, VOC, and ammonia. *Id.* The inventories should meet the data requirements of EPA's Consolidated Emissions Reporting Rule (codified at

40 CFR part 51 subpart A) and include any additional inventory information needed to support the SIP's attainment demonstration and (where applicable) RFP demonstration. 40 CFR 51.1008(a)(1) and (2).

Baseline emissions inventories are required for the attainment demonstration and for meeting RFP requirements. As determined on the date of designation, the base year for these inventories should be the most recent calendar year for which a complete inventory was required to be submitted to EPA. The emissions inventory for calendar year 2002 or other suitable year should be used attainment planning and RFP plans for areas initially designated nonattainment for the PM_{2.5} NAAQS in 2005. 40 CFR 51.1008(b).

EPA has provided additional guidance for PM_{2.5} emissions inventories in "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations," November 2005 (EPA-454/R-05-001).

2. Emissions Inventories in the SJV PM_{2.5} SIP

The base year and future year baseline planning inventories for direct PM_{2.5} and all PM_{2.5} precursors for the SJV PM_{2.5} nonattainment area together with additional documentation for the inventories are found in Appendix B of the 2008 PM_{2.5} Plan. Both average winter day and average annual day inventories are provided for the Plan's

base year of 2005 and each baseline year from 2009 to 2014. These base year and baseline inventories incorporate reductions from Federal, State, and District measures adopted prior to 2007. See 2008 PM_{2.5} Plan, p. B-1 and 2007 State Strategy, Appendix A, p. 1. A winter inventory is provided because the majority of high PM_{2.5} days in the SJV occur during the winter months between November and February. 2008 PM_{2.5} Plan, Figures H-4 and H-5.

Both base year and baseline inventories use the most current version of California's mobile source emissions model, EMFAC2007, for estimating on-road motor vehicle emissions. EPA has approved this model for use in SIPs and transportation conformity analyses. 73 FR 3464 (January 18, 2008).

Table 1 is a summary of the average annual day inventories of direct PM_{2.5} and PM_{2.5} precursors for the base year of 2005. These inventories provide the basis for the control measure analysis and the RFP and attainment demonstrations in the 2008 PM_{2.5} Plan.

As a starting point for the 2008 PM_{2.5} Plan's inventories, the District used CARB's inventory for the year 2002. An example of this inventory and CARB's documentation for its inventories can be found in Appendices A and F, respectively, of the 2007 State Strategy. The 2002 inventory for the SJV was projected to 2005 and future years using CARB's California Emissions Forecasting System (CEFSv 1.06). See 2008 PM_{2.5} Plan, p. B-1.

TABLE 1—SAN JOAQUIN VALLEY EMISSIONS INVENTORY SUMMARY FOR DIRECT PM_{2.5} AND PM_{2.5} PRECURSORS FOR THE 2005 BASE YEAR

(Tons per annual average day)

Emissions inventory category	Direct PM _{2.5}	NO _x	SO ₂	VOC	Ammonia
	2005	2005	2005	2005	2005
Stationary Sources	13.3	80.1	20.4	121.5	19.8
Area Sources	51.5	13.5	0.9	140.7	355.9
On-Road Mobile Sources	12.1	327.9	2.6	94.8	6.2
Off-Road Mobile Sources	9.0	153.9	2.4	62.7	0
Total	86.0	575.4	26.4	419.8	382.0

RFP. These provisions are found in the PM_{2.5} implementation rule and preamble at 72 FR 20586 at 20623–20628, 40 CFR 51.1002(c), 72 FR 20586, 20619–20620 and 20636, respectively. On May 13, 2010, EPA granted the petition with respect to the fourth issue. Letter, Gina McCarthy, EPA, to David Baron and Paul Cort, Earthjustice, May 13, 2010. On April 25, 2011, EPA granted the petition with respect to the first and third issues but denied the petition with respect to the second issue given that

the deferral period for CPM emissions limits had already ended. Letter, Lisa P. Jackson, EPA, to Paul Cort, Earthjustice, April 25, 2011. EPA intends to publish a **Federal Register** notice that will announce the granting of the latter petition with respect to certain issues and to initiate a notice and comment process to consider proposed changes to the 2007 PM_{2.5} implementation rule.

Neither the District nor the State relied on the first, third, or fourth of these provisions in

preparing the 2008 PM_{2.5} Plan or the 2007 State Strategy. The District has deferred some, but not all, CPM limits in its rules. This limited deferral does not affect the proposed approvals of the SJV PM_{2.5} SIP's RACM/RAC and expeditious attainment demonstrations. EPA will evaluate any rule adopted or revised by the District after January 1, 2011 to assure that it appropriately addresses CPM.

3. Proposed Action on the Emissions Inventories

The inventories in the SJV PM_{2.5} SIP are based on the most current and accurate information available to the State and District at the time the Plan was developed and submitted (including using the latest EPA-approved version of California's mobile source emissions model, EMFAC2007), address comprehensively all source categories in the SJV, and are consistent with EPA's inventory guidance. For these reasons, EPA is proposing to approve the 2005 base year emissions inventory in the SJV PM_{2.5} SIP as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008(a)(1) and to find that the baseline inventories in the SJV PM_{2.5} SIP provide an adequate basis for the RACM/RACT, RFP, and attainment demonstrations. We provide more detail on our review of the base year inventory as well as the projected year inventories in section II.A. of the TSD.

Since late 2007, California has experienced an economic recession that has greatly reduced current levels of economic activity in the State's construction and goods movement sectors. The recession has resulted in lowered projected future levels of activity in this sector. 2011 Progress Report, Appendix E. As a result, projected emissions levels from these categories are now substantially lower than those projected for 2008 and later in the Plan as submitted in 2008. At this time, California is addressing these recession impacts on future economic activity through adjustments to the baseline inventories for specific source categories. 2011 Progress Report, Appendix E. There are no recession-related adjustments to the 2005 base year inventory in the SJV 2008 PM_{2.5} Plan.

CARB also made technical changes to the inventories for diesel trucks, buses, and certain categories of off-road mobile source engines as part of its December 2010 rulemaking amending the In-Use On-Road Truck and Bus Rule and In-Use Off-Road Engine Rule. *Id.* The State estimates that these changes collectively reduce the 2005 base year NO_x inventory in the SJV by approximately 6 percent and the PM_{2.5} inventory by 5 percent.¹³ These changes are small given the normal and unavoidable uncertainties in all emissions inventories and, therefore, do not

change our basis for proposing to approve the base year inventory or to find the baseline inventories adequate for SIP planning purposes. We discuss the impact of these changes on the Plan's RFP and attainment demonstrations later in this notice.

We note that the State and District are currently working on revisions to the SJV PM_{2.5} SIP to address the 2006 24-hour PM_{2.5} standards. These revisions are due to EPA in December 2012 and will include the most current inventory information that is available.

B. Reasonably Available Control Measures/Reasonably Available Control Technology Demonstration and Adopted Control Strategy

1. Requirements for RACM/RACT

CAA section 172(c)(1) requires that each attainment plan "provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards." EPA defines RACM as measures that a state finds are both reasonably available and contribute to attainment as expeditiously as practicable in its nonattainment area. Thus, what constitutes RACM/RACT in a PM_{2.5} attainment plan is closely tied to that plan's expeditious attainment demonstration. 40 CFR 51.1010; 72 FR 20586 at 20612. States are required to evaluate RACM/RACT for direct PM_{2.5} and all of its attainment plan precursors. 40 CFR 51.1002(c).

Consistent with subpart 1 of Part D of the CAA, EPA is requiring a combined approach to RACM and RACT for PM_{2.5} attainment plans. Subpart 1, unlike subparts 2 and 4, does not identify specific source categories for which EPA must issue control technology documents or guidelines for what constitutes RACT, or identify specific source categories for state and EPA evaluation during attainment plan development. 72 FR 20586 at 20610. Rather, under subpart 1, EPA considers RACT to be part of an area's overall RACM obligation. Because of the variable nature of the PM_{2.5} problem in different nonattainment areas, EPA determined not only that states should have flexibility with respect to RACT and RACM controls but also that in areas needing significant emission reductions to attain the standards, RACT/RACM controls on smaller

sources may be necessary to reach attainment as expeditiously as practicable. 72 FR 20586 at 20612, 20615. Thus, under the PM_{2.5} implementation rule, RACT and RACM are those reasonably available measures that contribute to attainment as expeditiously as practicable in the specific nonattainment area. 40 CFR 51.1010; 72 FR 20586 at 20612.

The PM_{2.5} implementation rule requires that attainment plans include the list of measures a state considered and information sufficient to show that the state met all requirements for the determination of what constitutes RACM/RACT in its specific nonattainment area. 40 CFR 51.1010. In addition, the rule requires that the state, in determining whether a particular emissions reduction measure or set of measures must be adopted as RACM/RACT, consider the cumulative impact of implementing the available measures and to adopt as RACM/RACT any potential measures that are reasonably available considering technological and economic feasibility if, considered collectively, they would advance the attainment date by one year or more. *Id.* Any measures that are necessary to meet these requirements which are not already either federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area. 72 FR 20586 at 20614.

A more comprehensive discussion of the RACM/RACT requirement for PM_{2.5} attainment plans and EPA's guidance for it can be found in the PM_{2.5} implementation rule preamble (72 FR 20586 at 20609–20633) and in section II.D. of the TSD.

2. RACM/RACT Demonstration in the SJV PM_{2.5} SIP

For the 2008 PM_{2.5} Plan and the 2007 State Strategy, the District, CARB, and the local agencies (through the SJV's eight metropolitan planning organizations (MPO)) each undertook a process to identify and evaluate potential reasonably available control measures that could contribute to expeditious attainment of the PM_{2.5} standards in the SJV. These RACM/RACT analyses address control measures for sources of direct PM_{2.5}, NO_x and SO₂, which are the State's selected attainment plan precursors for the 1997 PM_{2.5} standards in SJV (see section V.C.3 below). We describe each agency's efforts below.

¹³ See attachment 1 to the letter, Lynn Terry, Deputy Executive Officer, CARB, to Elizabeth Adams, Deputy Director, Air Division, EPA Region 9, May 18, 2011 (CARB Progress Report supplement), in the docket for today's proposal.

a. District's RACM/RACT Analysis and Adopted Control Strategy

The District's RACM/RACT analysis, which focuses on stationary and area source controls, is described in Chapter 6 and Appendix I of the 2008 PM_{2.5} Plan. To identify potential RACM/RACT, the District reviewed potential measures from a number of sources including EPA's list of potential control measures in the preamble to the PM_{2.5} implementation rule (72 FR 20586 at 20621), measures in other nonattainment areas' plans, and measures suggested by the public during development of the 2008 PM_{2.5} Plan. 2008 PM_{2.5} Plan, pp. 6–6 to 6–8. The identified potential measures, as well as existing District measures, are described by emissions inventory category in Appendix I. These measures address emissions of direct PM_{2.5}, NO_x and SO₂. See 2008 PM_{2.5} Plan, p. 6–8 and Appendix I. Potential RACM/RACT controls for VOC or ammonia were not specifically identified or evaluated.

From the set of identified potential controls for PM_{2.5}, NO_x, and SO₂, the District selected measures for adoption and implementation based on the technological feasibility and practicality of emissions controls, the potential magnitude and timing of emissions reductions, cost effectiveness, and other acceptable criteria. 2008 PM_{2.5} Plan, p. 6–7.

After completing its RACM/RACT analysis for stationary and area sources

under its jurisdiction, the District developed its "Stationary Source Regulatory Implementation Schedule" (2008 PM_{2.5} Plan, Table 6–2) which gives the schedule for regulatory adoption and implementation of the selected RACM/RACT measures. The District also identified a number of source categories for which feasibility studies would be undertaken to refine the inventory and evaluate potential controls. These categories and the schedule for studying them are listed in Table 6–4 of the 2008 PM_{2.5} Plan.

In the five years prior to the adoption of the 2008 PM_{2.5} Plan, the District developed and implemented comprehensive plans to address attainment of the PM₁₀ standards (2003 PM₁₀ Plan, approved 69 FR 30005 (May 26, 2004)), the 1-hour ozone standards (2004 Extreme Ozone Attainment Plan, approved 75 FR 10420 (March 8, 2010)), and the 8-hour ozone standards (2007 Ozone Plan, submitted November 16, 2007). These plans for other NAAQS have resulted in the adoption by the District of many new rules and revisions to existing rules for stationary and area sources. For the most part, the District's current rules are equivalent to or more stringent than those developed by other air districts. In addition to these stationary and area source measures, the District has also adopted an indirect source review rule, Rule 9510, to address increased indirect emissions from new industrial, commercial and

residential developments. See SJVUAPCD Rule 9510 "Indirect Source Review," adopted December 15, 2005, approved 76 FR 26609 (May 9, 2011). The District also operates incentive grant programs to accelerate turnover of existing stationary and mobile engines to cleaner units. See 2008 PM_{2.5} Plan, Section 6.5 and SJV PM_{2.5} Progress Report, section 2.3.

For the 2008 PM_{2.5} Plan, the District identified and committed to adopt and implement 13 new control measures for direct PM_{2.5}, NO_x, and/or SO_x. In Table 2 below, we list these measures, which mostly involve strengthening existing District rules, their anticipated and actual adoption dates and their current SIP approval status. As can be seen from Table 2, the District has met its intended rulemaking schedule with one exception and has only two rule actions remaining (S-COM–6 and S-COM–10). Table 6–3 in the Plan shows estimated emissions reductions from each rule for each year from 2009 to 2014; however, the District's commitment is only to the aggregate emissions reductions of direct PM_{2.5}, NO_x, and SO₂ in each year. 2008 PM_{2.5} Plan, p. 6–9 and SJVUAPCD Governing Board Resolution, p. 5. We show these commitments in Table 3 below. In its SJV PM_{2.5} Progress Report, the District updated the reduction estimates to reflect the rules as adopted. See Table 4 below.

TABLE 2—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2008 PM_{2.5} PLAN SPECIFIC RULE COMMITMENTS

Measure No.	District rule	Expected adoption date	Actual adoption date	Current SIP approval status
S-AGR-1	4103—Open Burning	2nd Q—2010	April 2010	Proposed approval signed: June 29, 2011.
S-COM-1	4320—Advanced Emissions Reductions for Boilers, Steam Generators and Process Heaters (> 5 MMBtu/hr).	3rd Q—2008	October 2008	Approved. 75 FR 1715 (January 13, 2010).
S-COM-2	4307—Boilers, Steam Generators and Process Heaters (2 to 5 MMBtu/hr).	3rd Q—2008	October 2008	Approved. 76 FR 5276 (January 31, 2011).
S-COM-3	4308—Boilers, Steam Generators and Process Heaters (0.075 to < 2 MM Btu/hr).	4th Q—2009	December 2009	Approved. 76 FR 16696 (March 25, 2011).
S-COM-5	4703—Stationary Gas Turbines	3rd Q—2007	September 2007	Approved. 74 FR 53888 (October 21, 2009).
S-COM-6	Rule 4702—Reciprocating Internal Combustion Engines.	4th Q—2010	Anticipated August 2011.	Most current revision of rule approved: January 18, 2007 at 73 FR 1819 (January 10, 2008).
S-COM-7	4354—Glass Melting Furnaces	3rd Q—2008 .....	.....	76 FR 37044, June 24, 2011.
S-COM-9	4902—Residential Water Heaters	1st Q—2009	March 2009	75 FR 24408 (May 5, 2010).
S-COM-10	4905—Natural Gas-Fired, Fan Type Residential Central Furnaces.	4nd Q—2014	TBD	Most current revision of rule approved: October 20, 2005 at 72 FR 29886 (May 30, 2007).
S-COM-14	4901—Wood Burning Fireplaces and Wood Burning Heaters.	3rd Q—2009	October 2008	Approved. 74 FR 57907 (November 10, 2009).
S-IND-9	4692—Commercial Charbroiling	2nd Q—2009	September 2009	Proposed approval signed: June 9, 2011
S-IND-21	4311—Flares	2nd Q—2009	June 2009	Action pending.

TABLE 2—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2008 PM_{2.5} PLAN SPECIFIC RULE COMMITMENTS—Continued

Measure No.	District rule	Expected adoption date	Actual adoption date	Current SIP approval status
M-TRAN-1	9410—Employer Based Trip Reduction Program.	4th Q—2009	December 2009	Action pending.

Source: 2008 PM_{2.5} Plan, Table 6–2, revised June 17, 2010. Anticipated adoption date for Rule 4702, SJVAPCD, District Highlights, June 16, 2011 Actions by the District Governing Board.

TABLE 3—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2008 PM_{2.5} PLAN AGGREGATE EMISSIONS REDUCTIONS COMMITMENTS
[Tons per average annual day]

	2009	2010	2011	2012	2013	2014
NO _x	2.43	3.24	4.26	8.56	8.82	8.97
Direct PM _{2.5}	1.60	2.96	4.46	6.69	6.70	6.70
SO ₂	0.06	0.11	0.16	0.92	0.92	0.92

TABLE 4—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT AGGREGATE CREDITABLE EMISSIONS REDUCTIONS FROM ADOPTED RULES
[Tons per average annual day]

	2009	2012	2014
NO _x	2.4	10.2	11.4
Direct PM _{2.5}	1.6	4.3	4.3
SO ₂	0.1	3.5	3.6

Source: SJVUAPCD, "Table 3–1 Adjusted PM_{2.5} Emission Inventory; Table 3–2 Adjusted NO_x Emission Inventory; and Table 3–3 Adjusted SO_x Emission Inventory," March 2011 and TSD, Table F–4.

b. CARB's RACM Analysis and Adopted Control Strategy

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products.

Given the need for significant emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, the State of California has been a leader in the development of stringent control measures for on-road and off-road mobile sources and the fuels that power them. California has unique authority under CAA section 209 (subject to a waiver by EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines and new and in-use off-road vehicles and engines.

California's emissions standards have reduced new car emissions by 99 percent and new truck emissions by 90 percent from uncontrolled levels. 2007 State Strategy, p. 37. The State is also working with EPA on goods movement activities and is implementing programs to reduce emissions from ship auxiliary engines, locomotives, harbor craft and new cargo handling equipment. In addition, the State has standards for

lawn and garden equipment, recreational vehicles and boats, and other off-road sources that require newly manufactured equipment to be 80–98 percent cleaner than their uncontrolled counterparts. Id. Finally, the State has adopted many measures that focus on achieving reductions from in-use mobile sources that include more stringent inspection and maintenance requirements in California's Smog Check program, truck and bus idling restrictions, and various incentive programs. Appendix A of the TSD includes a list of all measures adopted by CARB between 1990 and the beginning of 2007. These measures, reductions from which are reflected in the Plan's baseline inventories, fall into two categories: Measures that are subject to a waiver of Federal pre-emption under CAA section 209 (section 209 waiver measures or waiver measures) and those for which the State is not required to obtain a waiver (non-waiver measures). Emissions reductions from waiver measures are fully creditable in attainment and RFP demonstrations and may be used to meet other CAA requirements, such as contingency measures. See section II.F.4.a.i. of the TSD and EPA's proposed approval of the SJV 1-Hour Ozone Plan at 74 FR 33933, 33938 (July 14, 2009) and final

approval at 75 FR 10420 (March 8, 2010). Generally, the State's baseline non-waiver measures have been approved by EPA into the SIP and are fully creditable for meeting CAA requirements. See TSD Appendix A.

CARB developed its proposed 2007 State Strategy after an extensive public consultation process to identify potential SIP measures. This process is described in the 2008 PM_{2.5} Plan at p. 7–11.¹⁴ Through this process, CARB identified and has committed to propose 15 new defined measures. These measures focus on cleaning up the in-use fleet as well as increasing the stringency of emissions standards for a number of engine categories, fuels, and consumer products. They build on CARB's already comprehensive program described above that addresses emissions from all types of mobile sources through both regulations and incentive programs. See Appendix A of the TSD. Table 5 lists the defined measures in the 2007 State Strategy that contribute to attainment of the PM_{2.5} standards in the SJV and their current adoption and approval status. Table 6

¹⁴ More information on this public process including presentations from the workshops and symposium that preceded adoption of the 2007 State Strategy can be found at <http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm>.

provides the State's current estimate of the emissions reductions in the SJV from these measures. the emissions reductions in the SJV from these measures.

TABLE 5—2007 STATE STRATEGY DEFINED MEASURES SCHEDULE FOR CONSIDERATION AND CURRENT STATUS

State measures	Expected action year	Current status
Defined Measures in 2007 State Strategy		
Smog Check Improvements	2007–2009	Elements approved 75 FR 38023 (July 1, 2010). ¹⁵
Expanded Vehicle Retirement (AB 118)	2007	Adopted by CARB, June 2009; by BAR, September 2010.
Modification to Reformulated Gasoline Program	2007	Approved, 75 FR 26653 (May 12, 2010).
Cleaner In-Use Heavy Duty Trucks	2008	Proposed approval signed: June 29, 2011.
Accelerated Introduction of Cleaner Locomotives	2008	Prop 1B bond funds awarded to upgrade line-haul locomotive engines not already accounted for by enforceable agreements with the railroads. Those cleaner line-hauls will begin operation by 2012.
Cleaner In-Use Off-Road Engines	2007, 2010	Waiver action pending.
Cleaner In-Use Agricultural Equipment	2009	Incentive program in progress. No credit taken.
New Emissions Standards for Recreational Boats	2013	Partial adoption, July 2008, Additional action expected 2013.

Source: 2009 State Strategy Update, p.4 and 2011 Progress Report, Table 1. Additional information from <http://www.ca.arb.gov>. Only defined measures with direct PM_{2.5} or NO_x reductions in the SJV are shown here.

TABLE 6—EXPECTED EMISSIONS REDUCTIONS FROM DEFINED MEASURES IN THE 2011 PROGRESS REPORT FOR THE SAN JOAQUIN VALLEY
[Tons per day 2014]

State measure	Direct PM _{2.5}	NO _x
Smog Check Improvements (BAR)	0.1	0.7
Expanded Vehicle Retirement .....	.....	.....
Cleaner In-Use Heavy-Duty Trucks	1.7	1.1
Accelerated Intro. of Cleaner Line-Haul Locomotives	0.0	0.0
Cleaner In-Use Off-Road Equipment (> 25 hp)	0.0	0.3

Source: 2011 Progress Report, p. 18. Only defined measures with direct PM_{2.5} or NO_x reductions in the SJV are shown here.

In addition to the State's commitment to propose defined new measures, the 2007 State Strategy includes an enforceable commitment for emissions reductions sufficient, in combination with existing measures and the District's commitments, to attain the PM_{2.5} NAAQS in the San Joaquin Valley by the requested attainment date of April 5, 2015. For the SJV, these emissions reductions commitments were to achieve 5 tpd of direct PM_{2.5} and 76 tpd of NO_x in the SJV by the attainment year of 2014. See 2007 State Strategy, p. 63 and CARB Resolution 07–28, Attachment B, p. 6. The nature of this commitment is described in the State Strategy as follows:

The total emission reductions from the new measures necessary to attain the federal standards are an enforceable State commitment in the SIP. While the proposed State Strategy includes estimates of the emission reductions from each of the individual new measures, it is important to

note that the commitment of the State Strategy is to achieve the total emission reductions necessary to attain the federal standards, which would be the aggregate of all existing and proposed new measures combined. Therefore, if a particular measure does not get its expected emission reductions, the State still commits to achieving the total aggregate emission reductions, whether this is realized through additional reductions from the new measures or from alternative control measures or incentive programs. If actual emission decreases occur in any air basin for which emission reduction commitments have been made that are greater than the projected emissions reductions from the adopted measures in the State Strategy, the actual emission decreases may be counted toward meeting ARB's total emission reduction commitments.

CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 3.

c. The Local Jurisdictions' RACM Analysis

The local jurisdictions' RACM analysis was conducted by the SJV's eight MPOs.¹⁶ This analysis focused on potential NO_x emissions reductions from transportation control measures (TCM). TCMs are, in general, measures designed to reduce emissions from on-road motor vehicles through reductions in vehicle miles traveled or traffic congestion. The results of the analysis are described in Chapter 7 (pp. 7–8 to 7–11) of the 2008 PM_{2.5} Plan. It addressed NO_x but not direct PM_{2.5}, SO₂, or VOC.

For the 2008 PM_{2.5} Plan, the SJV MPOs reviewed and updated the RACM analysis they performed for the SJV 2007 [8-hour] Ozone Plan, based on EPA's guidance in the preamble to the PM_{2.5} implementation rule. For the 2007 Ozone Plan, they developed a local RACM strategy after an extensive

¹⁵ California Assembly Bill 2289, passed in 2010, requires the Bureau of Automotive Repair to direct older vehicles to high performing auto technicians and test stations for inspection and certification effective 2013. Reductions shown for the SmogCheck program in the 2011 Progress Report do not include reductions from AB 2289

improvements. CARB Progress Report supplement, attachment 5.

¹⁶ These eight MPOs represent the eight counties in the San Joaquin Valley nonattainment area: The San Joaquin Council of Governments, the Stanislaus Council of Governments, the Merced County

Association of Governments, the Madera County Transportation Commission, the Council of Fresno County Governments, Kings County Association of Governments, the Tulare County Association of Governments, and the Kern Council of Governments.

evaluation of potential RACM for advancing the 8-hour ozone standard attainment date. After reviewing the 2007 Ozone Plan's local RACM analysis, EPA's suggested RACM, recently developed plans from other areas, and the potential emission reductions available from the implementation of TCMs in the SJV, the MPOs determined that there were no additional local RACM for NO_x, beyond those measures already adopted, that could advance attainment of the PM_{2.5} NAAQS in the SJV. 2008 PM_{2.5} Plan, p. 7–11.

3. Proposed Actions on RACM/RAC T Demonstration and Adopted Control Strategy

We propose to find that there are, at this time, no additional reasonably available measures that individually or collectively would advance attainment of the PM_{2.5} NAAQS in the San Joaquin Valley nonattainment area by one year or more. This proposal is based on our review of potential RACM/RAC T in the 2008 PM_{2.5} Plan and updated and revised 2007 State Strategy; the District's and State's adopted control strategies, including their commitments to adopt measures and their progress in meeting those commitments; and our proposed concurrence (discussed below in section V.C.3.) with the State's determination that SO_x and NO_x are and VOC and ammonia are not attainment plan precursors per 40 CFR 51.1002(c). Therefore, we propose to find that the 2008 PM_{2.5} Plan, together with the updated and revised 2007 State Strategy, provides for the implementation of RACM/RAC T as required by CAA section 172(c)(1) and 40 CFR 51.1010.

We are also proposing to approve, with the exception of the commitment to revise Rule 4702, "Reciprocating Internal Combustion Engines," the District's commitments to adopt and implement specific control measures on the schedule identified in Table 6–2 (as amended June 15, 2010) in the 2008 PM_{2.5} Plan, to the extent that these commitments have not yet been fulfilled, and to achieve specific aggregate emissions reductions of direct PM_{2.5}, NO_x and SO_x by specific years as given in Table 6–3 of the 2008 PM_{2.5} Plan. The District had committed to revise Rule 4702 by December 2010, but now expects adoption to occur in August 2011. Because EPA is subject to a consent decree requiring that we approve or disapprove all elements of the SJV 2008 PM_{2.5} Plan by no later than

September 30, 2011,¹⁷ we are proposing to disapprove this element of the Plan; however, we will not need to finalize this proposed disapproval if the District adopts revisions to the rule that fulfill the commitment by the time of EPA's final action on the Plan. We note that the District's decision to include the commitment to revise this rule in its Plan was discretionary and that the Plan does not specifically rely upon emission reductions from this particular rule. Adoption of revisions to Rule 4702 is now expected in August 2011.

We are also proposing to approve CARB's commitments to propose certain defined measures, as given in Table B–1 in 2011 Progress Report, Appendix B and to achieve the total aggregate emissions reductions necessary to attain the 1997 PM_{2.5} standards in the SJV, whether these reductions are realized from the new measures, alternative control measures, incentive programs, or other actual emissions decreases. See CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 3. This commitment is to aggregate emissions reductions of 5 tpd direct PM_{2.5} and 76 tpd NO_x in the San Joaquin Valley by 2014 as given on page 21 of the 2009 State Strategy Status Report.

C. Attainment Demonstration

1. Requirements for Attainment Demonstrations

CAA section 172 requires a State to submit a plan for each of its nonattainment areas that demonstrates attainment of the applicable ambient air quality standard as expeditiously as practicable but no later than the specified attainment date. Under the PM_{2.5} implementation rule, this demonstration should consist of four parts:

- (1) Technical analyses that locate, identify, and quantify sources of emissions that are contributing to violations of the PM_{2.5} NAAQS;
- (2) Analyses of future year emissions reductions and air quality improvement resulting from already-adopted national, state, and local programs and from potential new state and local measures to meet the RACM/RAC T and RFP requirements in the area;
- (3) Adopted emissions reduction measures with schedules for implementation; and
- (4) Contingency measures required under section 172(c)(9) of the CAA.

See 40 CFR 51.1007; 72 FR 20586 at 20605.

¹⁷ See *Association of Irrigated Residents v. U.S. EPA*, Case No. 3:10–CV–03051–WHA, Consent Decree dated January 12, 2011.

The requirements for the first two parts are described in the sections on emissions inventories and RACM/RAC T above (sections V.A. and V.B.) and in the sections on air quality modeling, PM_{2.5} precursors, extension of the attainment date, and attainment demonstration that follow immediately below. Requirements for the third and fourth parts are described in the sections on the control strategy and contingency measures (sections V.B. and V.F.), respectively.

2. Air Quality Modeling in the SJV 2008 PM_{2.5} Plan

The PM_{2.5} implementation rule requires states to submit an attainment demonstration based on modeling results. Specifically, 40 CFR 51.1007(a) states:

For any area designated as nonattainment for the PM_{2.5} NAAQS, the State must submit an attainment demonstration showing that the area will attain the annual and 24-hour standards as expeditiously as practicable. The demonstration must meet the requirements of § 51.112 and Appendix W of this part and must include inventory data, modeling results, and emission reduction analyses on which the State has based its projected attainment date. The attainment date justified by the demonstration must be consistent with the requirements of § 51.1004(a). The modeled strategies must be consistent with requirements in § 51.1009 for RFP and in § 51.1010 for RAC T and RACM. The attainment demonstration and supporting air quality modeling should be consistent with EPA's PM_{2.5} modeling guidance.¹⁸

See also, 72 FR 20586 at 20665.

Air quality modeling is used to establish emissions attainment targets, the combination of emissions of PM_{2.5} and PM_{2.5} precursors that the area can accommodate without exceeding the NAAQS, and to assess whether the proposed control strategy will result in attainment of the NAAQS. Air quality modeling is performed for a base year and compared to air quality monitoring data in order to evaluate model performance. Once the performance is determined to be acceptable, future year changes to the emissions inventory are simulated to determine the relationship between emissions reductions and changes in ambient air quality throughout the air basin. The procedures for modeling PM_{2.5} as part of an attainment SIP are contained in EPA's "Guidance on the Use of Models

¹⁸ EPA's modeling guidance can be found in "Guideline on Air Quality Models" in 40 CFR part 51, Appendix W and "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and PM_{2.5} NAAQS and Regional Haze", EPA-454/B-07-002, April 2007.

and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and PM_{2.5} NAAQS and Regional Haze” (Guidance).

The air quality modeling that underpins the SJV 2008 PM_{2.5} Plan is described in Chapter 3 and documented in Appendices E–H and the several additional appendices submitted with the Plan in 2008. CARB supplemented this documentation in 2011. See Letter, John DaMassa, CARB to Frances Wicher, EPA, January 28, 2011 (CARB modeling supplement).

We provide a brief description of the modeling and a summary of our evaluation of it below. More detailed information about the modeling and our evaluation are available in section II.D. of the TSD.

CARB and the District jointly performed the air quality modeling for the 2008 PM_{2.5} Plan. Significant time, money, and effort by CARB, the District, and many others have gone into preparing the air quality modeling to support the attainment demonstration in the 2008 PM_{2.5} Plan for the San Joaquin Valley, including support for the multi-million dollar California Regional Particulate Air Quality Study (CRPAQS). CRPAQS is a cooperative effort involving California cities, State and local and air pollution control agencies, federal agencies, industry groups, academics, and contractors. Field data for CRPAQS were collected during the 14 months from December 1999 through February 2001 and included short-term, intensive monitoring during the fall and winter. The study’s design placed emphasis on collecting sufficient continuous air quality and meteorological data, both at the surface and aloft, to support receptor and photochemical modeling. Data and modeling results based on the CRPAQS study provided solid underpinnings for the 2008 PM_{2.5} Plan.

The 2008 PM_{2.5} Plan uses multiple modeling analyses to demonstrate attainment of the PM_{2.5} NAAQS in the SJV. The narrative mainly relies on several variants of an approach based on receptor modeling for the annual PM_{2.5} NAAQS, but photochemical modeling is also included. The receptor modeling approach begins with Chemical Mass Balance (CMB) modeling, which distinguishes the ambient PM_{2.5} contributions of several broad emissions source categories based on how they match the chemical species components of PM_{2.5} measurements. The CMB results are then refined with emissions inventory data to distinguish additional source categories; an area of influence analysis to better reflect particular sources affecting a monitor; and

information from past photochemical modeling to assess how secondarily-formed PM_{2.5} will respond to changes in precursor emissions. Several variants of this approach were used with CMB results from different locations and different base case years. This modeling only addresses the annual PM_{2.5} standard.

The Plan also includes an attainment demonstration using photochemical modeling with the Community Multiscale Air Quality (CMAQ) model. This modeling incorporates data collected during CRPAQS and addresses both the annual and 24-hour PM_{2.5} standards. Under EPA modeling guidance, this is considered the main attainment demonstration, with the receptor modeling as a corroborating analysis. Guidance, p. 4 and p. 103.

EPA recommends that States prepare modeling protocols as part of their modeled attainment demonstrations. Guidance, p. 133. The Guidance at pp. 133–134 describes the topics to be addressed in this modeling protocol. A modeling protocol should detail and formalize the procedures for conducting all phases of the modeling analysis, such as describing the background and objectives, creating a schedule and organizational structure, developing the input data, conducting model performance evaluations, interpreting modeling results, describing procedures for using the model to demonstrate whether proposed strategies are sufficient to attain the NAAQS, and producing documentation to be submitted for EPA Regional Office review and approval prior to actual modeling.

The 2008 PM_{2.5} Plan’s modeling protocol is contained in Appendix F and includes descriptions of both the receptor modeling approaches and the photochemical modeling. Additional description of the photochemical modeling is covered in Appendix G, and also in the additional appendix entitled “Regional Model Performance Analysis” (RMPA). The protocol covers all of the topics recommended in the Guidance, except that it does not identify how modeling and other analyses will be archived or made available to the public. See Guidance, p. 117.

The 2008 PM_{2.5} Plan’s air quality model performance is discussed in the RMPA, starting at p. 6, and also more extensively in the CARB modeling supplement. In the Plan as submitted in 2008, modeling performance was not sufficiently documented for EPA to fully evaluate it, but CARB’s modeling supplement provides an extensive statistical and graphical analysis demonstrating adequate model

performance. The supplement included discussion of the evaluation results and also of sensitivity or diagnostic testing, both of which are necessary for confidence in the model and the performance statistics presented. The testing described by CARB provides assurance that the model is adequately simulating the physical and chemical processes leading to PM_{2.5} in the atmosphere and that the model responds in a scientifically reasonable way to emissions changes.

The Plan as submitted in 2008 provided insufficient documentation about the deviations from EPA’s guidance on performing the Speciated Modeled Attainment Test (SMAT); again the CARB modeling supplement provides a reasonable rationale for the deviations, about which EPA’s Office of Air Quality Planning and Standards was consulted. The Plan cites several factors as justifying such deviations (*e.g.*, the prevalence of ammonia, the dominance of ammonium nitrate, the effect of substantial controls on fugitive dust and direct carbon emissions (p. G–10 and p. 3–20)), and the CARB modeling supplement provides documentation on accounting for evaporation of the ammonium ion. The CARB modeling supplement also provides extensive documentation on the Relative Reduction Factors, which are the key results from the model for use in the attainment test, and the details of their calculation, which were not presented in the 2008 PM_{2.5} Plan as originally submitted. EPA proposes to conclude that the attainment tests are adequate and consistent with EPA guidance.

In addition to a modeled attainment demonstration, which focuses on locations with an air quality monitor, EPA generally requires an unmonitored area analysis. This analysis is intended to ensure that a control strategy leads to reductions in PM_{2.5} at other locations that have no monitor but that might have baseline (and future) ambient PM_{2.5} levels exceeding the NAAQS. The unmonitored area analysis uses a combination of model output and ambient data to identify areas that might exceed the NAAQS if monitors were located there. The analysis should include, at a minimum, all counties designated nonattainment and the counties surrounding the nonattainment area. In order to examine unmonitored areas in all portions of the modeling domain, EPA recommends use of interpolated spatial fields of ambient data combined with gridded modeled outputs. Guidance, p. 29.

The section in the 2008 PM_{2.5} Plan entitled “Unmonitored peaks” presents an abbreviated simple screening

analysis, consisting of a filled concentration contour plot (Figure 3 on p. G-20), and the observation that “there are no areas with steep gradients that would result in higher design values than those measured at monitors.” 2008 PM_{2.5} Plan, p. G-15. This analysis departs significantly from the procedures recommended in the Guidance. However, the CARB modeling supplement documents a subsequent unmonitored area analysis that uses procedures recommended in the Guidance, including use of EPA’s MATS software, and concludes that there are no unmonitored PM_{2.5} peaks in the modeling domain that would violate the annual PM_{2.5} NAAQS.

In summary, despite shortcomings in the documentation within the 2008 PM_{2.5} Plan as submitted in 2008, the CARB modeling supplement enables EPA to conclude that the modeling supporting the Plan is sound. EPA proposes to approve the air quality modeling and to find that the modeling provides an adequate basis for the RACM/RACT, RFP, and attainment demonstrations in the Plan.

Effect of Inventory Changes on the Air Quality Modeling and Attainment Demonstrations

As discussed above in section V.A., CARB has recently updated the inventories for several mobile source categories for both the base and future years as well as revised the economic forecasts on which the future inventories were based. Relative to emissions in the Plan, the decreases in the base year 2005 emissions inventory due to the inventory updates are about 6 percent for NO_x and 5 percent for direct PM_{2.5} emissions; the 2014 attainment year target emissions levels are unchanged. CARB Progress Report supplement, Attachment 1. EPA believes that these base year emission changes are small enough to be relatively minor in the context of the overall uncertainties in inventories and in photochemical modeling itself, and that the base case modeling remains valid. However, EPA assessed how these emission inventory changes would be expected to affect the attainment demonstration, which relies on emission reductions between the base year and the 2014 attainment target year. The emissions decreases in the base year tend to reduce the relative effect of controls, and to increase the projected PM_{2.5} concentrations in the attainment year. (This is because the base year ambient concentration is now known to result from a slightly lower level of emissions. The model must therefore be slightly under-predicting,

and so the predicted attainment year concentration should be slightly higher to compensate.) To assess the effect of the inventory changes on the attainment demonstration, EPA used model sensitivity results in the 2011 Progress Report supplement, Attachment 3. Taking into account the model’s sensitivity to the inventory changes, EPA estimates that predicted ambient concentrations in the 2014 attainment year would be higher by only about 2.5 percent due to the emission inventory revisions, and that predicted design values for 2014 remain below the PM_{2.5} NAAQS. EPA therefore proposes to find that the attainment demonstration remains valid, despite the emission inventory changes.

Pollutant Ratios Used To Determine PM_{2.5} Equivalency

The 2011 Progress Report and the 2011 SJV Progress Report use a PM_{2.5} equivalency metric in a number of tables and demonstrations. Two ratios are used:

- 9 tpd NO_x to 1 tpd direct PM_{2.5}
- 1 tpd SO_x to 1 tpd direct PM_{2.5}

The NO_x:PM_{2.5} ratio is documented in supplemental information provided by CARB, entitled “Precursor Effectiveness,” which is available in the docket for this proposed rulemaking. In two separate runs of the CMAQ modeling application used for the attainment demonstration, CARB simulated an additional 10 percent reduction in modeling domain NO_x emissions and in direct PM_{2.5} emissions. These PM_{2.5} effects were divided by the emissions totals for each pollutant to give a concentration change per emissions change, or effectiveness, for each pollutant. This effectiveness shows the reduction of precursor emissions needed for a given concentration change, and so can be used to estimate an interpollutant equivalence ratio, the amount of one precursor that is equivalent to the other in terms of the effect on ambient concentrations of PM_{2.5}. The direct PM_{2.5} effectiveness was divided by the NO_x effectiveness to arrive at a NO_x:PM_{2.5} ratio for each monitor; the average of these is about 9. This method appears to be adequate for purposes of assessing the effect of area-wide emissions changes, such as are used in RFP, contingency measures, and conformity budgets, and EPA is proposing to allow its use here.¹⁹

¹⁹ EPA is proposing to approve the use of this NO_x to PM_{2.5} interpollutant trading ratio to meet CAA planning requirements for the 1997 PM_{2.5} standards in the SJV. EPA is also proposing to approve the use of this ratio in transportation conformity determinations for the 2006 24-hour PM_{2.5} NAAQS but only until such time as EPA finds

The SO_x:PM_{2.5} ratio is documented in supplemental information provided by the District which is available in the docket for this proposed rulemaking. See “Atmospheric Interpollutant Equivalency between Direct Particulate Emissions and Secondary Particulate Formed from Gaseous Sulfur Oxide Emissions”; the spreadsheet “Interpollutant Calculation”; and letter dated May 27, 2009 from David Warner, San Joaquin Valley Air Pollution Control District to Mr. Joseph Douglas, California Energy Commission, Attachment II, “Interpollutant Offset Ratio Explanation.” After reviewing this documentation, EPA does not agree with the method used to develop the ratio.

The approach used by the District to estimate inter-pollutant equivalency ratios rests on the incorrect assumption that ambient sensitivity to emissions reductions of a given precursor can be estimated as the ratio of concentration to emissions. This is the assumption of linear “rollback”, and inherently cannot address the complexities of PM_{2.5} formation chemistry, which is nonlinear. It is in contrast to the State’s approach for the NO_x:PM_{2.5} ratio which used photochemical modeling results to take into account such nonlinearity. EPA’s evaluation of the SO_x:PM_{2.5} approach is discussed in greater detail in section II.B.4. of the TSD.

EPA is proposing to not allow the use of this SO_x to PM_{2.5} interpollutant trading ratio at this time to meet any CAA planning requirements for the 1997 PM_{2.5} standards in the SJV. We note that the State had proposed the use of this ratio to meet only the CAA requirement for contingency measures. See section V.E. below.

adequate or approves budgets developed specifically for the 2006 standard. EPA is not proposing, at this time, to approve the use of this ratio in plans for future PM standards or in the District’s new source review (NSR) permitting program.

The District recently submitted revisions to its NSR rule, Rule 2201, which require that interpollutant trading ratios used for purposes of satisfying PM_{2.5} NSR offset requirements first be approved by EPA into the SIP. See Rule 2201 (April 21, 2011), section 4.13.3.2. The Rule 2201 submittal also states that the District intends to submit SJV-specific PM_{2.5} interpollutant trading ratios for EPA’s approval in a future SIP revision but will, in the interim, require project proponents to use the default ratios provided in the preamble to EPA’s PM_{2.5} NSR rule (73 FR 28321 at 28339 (May 16, 2008)), until alternative trading ratios are approved by EPA into the SIP. See SJVAPCD, Final Draft Staff Report, Proposed Amendments to Rule 2201 (New And Modified Stationary Source Review Rule), March 17, 2011, p. 4.

3. PM_{2.5} Attainment Plan Precursors Addressed in the SJV 2008 PM_{2.5} SIP

EPA recognizes NO_x, SO₂, VOC, and ammonia as the main precursor gases associated with the formation of secondary PM_{2.5} in the ambient air. These gas-phase PM_{2.5} precursors undergo chemical reactions in the atmosphere to form secondary particulate matter. Formation of secondary PM_{2.5} depends on numerous factors including the concentrations of precursors; the concentrations of other gaseous reactive species; atmospheric conditions including solar radiation, temperature, and relative humidity; and the interactions of precursors with preexisting particles and with cloud or fog droplets. 72 FR 20586 at 20589.

As discussed previously, a state must submit emissions inventories for each of the four PM_{2.5} precursor pollutants. 72 FR 20586 at 20589 and 40 CFR 51.1008(a)(1). However, the overall contribution of different precursors to PM_{2.5} formation and the effectiveness of alternative potential control measures will vary by area. Thus, the precursors that a state should regulate to attain the PM_{2.5} NAAQS can also vary to some extent from area to area. 72 FR 20586 at 20589.

In the PM_{2.5} implementation rule, EPA did not require that all potential PM_{2.5} precursors must be controlled in each specific nonattainment area. See 72 FR 20586 at 20589. Instead, for reasons explained in the rule's preamble, a state must evaluate control measures for sources of SO₂ in addition to sources of direct PM_{2.5} in all nonattainment areas. 40 CFR 51.1002(c) and (c)(1). A state must also evaluate control measures for sources of NO_x unless the state and/or EPA determine that control of NO_x emissions would not significantly reduce PM_{2.5} concentrations in the specific nonattainment area. 40 CFR 51.1002(c)(2). In contrast, EPA has determined in the PM_{2.5} implementation rule that a state does not need to address controls for sources of VOC and ammonia unless the state and/or EPA make a technical demonstration that such controls would significantly contribute to reducing PM_{2.5} concentrations in the specific nonattainment area at issue. 40 CFR 51.1002(c)(3) and (4). Such a demonstration is required "if the administrative record related to development of its SIP shows that the presumption is not technically justified for that area." 40 CFR 51.1002(c)(5).

"Significantly contributes" in this context means that a significant reduction in emissions of the precursor from sources in the area would be

projected to provide a significant reduction in PM_{2.5} concentrations in the area. 72 FR 20586 at 20590. Although EPA did not establish a quantitative test for determining what constitutes a significant change, EPA noted that even relatively small reductions in PM_{2.5} levels are estimated to result in worthwhile public health benefits. *Id.*

EPA further explained that a technical demonstration to reverse the presumption for NO_x, VOC, or ammonia in any area could consider the emissions inventory, speciation data, modeling information, or other special studies such as monitoring of additional compounds, receptor modeling, or special monitoring studies. 72 FR 20586 at 20596–20597. These factors could indicate that the emissions or ambient concentration contributions of a precursor, or the sensitivity of ambient concentrations to changes in precursor emissions, differs for a specific nonattainment area from the presumption EPA established for that precursor in the PM_{2.5} implementation rule.

The SJV 2008 PM_{2.5} Plan does not explicitly identify the pollutants that have been selected as PM_{2.5} attainment plan precursors as defined in 40 CFR 51.1000. The Plan addresses NO_x and SO₂ in the RFP and attainment demonstrations and in the District's RACM/RAC_T analysis, and thereby implicitly identifies NO_x and SO₂ as attainment plan precursors. The Plan also includes supporting documentation for the inclusion of NO_x as an attainment plan precursor and for the exclusion of ammonia. In our November 30, 2010 proposal, we noted that the Plan did not fully evaluate the impact of controlling VOC as a precursor for PM_{2.5} attainment and contained conflicting information on whether controlling VOC, in addition to SO₂ and NO_x, may contribute significantly to reductions in ambient PM_{2.5} levels in the SJV. In 2011, however, CARB provided additional technical information supporting its position that VOC should not be considered a PM_{2.5} attainment plan precursor in the San Joaquin Valley. See letter, James Goldstene, CARB, to Frances Wicher, EPA, January 31, 2011, attachment 4 (CARB VOC supplement). We discuss below our evaluation of this additional technical information.

As mentioned above, ambient contribution and ambient sensitivity to emissions changes may both be considered in determining whether the presumption for an attainment plan precursor should be reversed. The 2008 PM_{2.5} Plan contains numerous qualitative statements that San Joaquin

Valley's ambient PM_{2.5} levels are dominated by ammonium nitrate, and that NO_x reductions are more effective at reducing ambient PM_{2.5} than reductions in the other precursors. Most of those statements are in Chapter 3 and Appendix F, and are based on excerpts of findings from the California Regional Particulate Air Quality Study (CRPAQS). Several of the cited CRPAQS documents are available at CARB's "Central California Air Quality Studies" Web site (at <http://www.arb.ca.gov/airways>).

For the 1997 annual and 24-hour PM_{2.5} NAAQS, the 2008 PM_{2.5} Plan contains some qualitative descriptions of precursor ambient contributions. For example, the 2008 PM_{2.5} Plan states on p. 2–8 that annual concentrations are driven by wintertime concentrations and further, that the highest short term concentrations are driven by ammonium nitrate, as found in the CRPAQS study:

For most of the sites within the SJV, 50–75% of the annual average PM_{2.5} concentration could be attributed to a high PM_{2.5} period occurring from November to January. At non-urban sites, the elevated PM_{2.5} was driven by secondary [ammonium nitrate].²⁰

There are also quantitative data in the Plan's Appendix G (p. G–21, Table 2) and, projected to 2014, in the Receptor Modeling Documentation (RMD). Ammonium nitrate for 2000 monitored data ranges from 24–36 percent of total PM_{2.5}, and if projected to 2014, ranges from 36–51 percent, confirming the importance of NO_x, one source of the nitrate in ammonium nitrate, as a precursor that significantly contributes to annual PM_{2.5} levels in the SJV.

In addition to composition data, ambient sensitivity to emissions changes can also be a consideration in determining which pollutants should be regulated in the attainment plan for a specific area. For ammonium nitrate PM_{2.5}, which is formed from both ammonia and NO_x, a key issue is whether the control of either or both precursors would be effective at reducing ambient PM_{2.5} concentrations. Among the findings cited in the 2008 PM_{2.5} Plan that address this issue are that:

Particulate [ammonium nitrate] concentrations are limited by the rate of [nitric acid] formation, rather than by the availability of [ammonia], and

²⁰ Quote from "Initial Data Analysis of Field Program Measurements," DRI Document No. 2497, July 29, 2005; Judith C. Chow, L.W. Antony Chen, Douglas H. Lowenthal, Prakash Doraiswamy, Kihong Park, Steven D. Kohl, Dana L. Trimble, John G. Watson, Desert Research Institute.

Comparisons of ammonia and nitric acid concentrations show that ammonia is far more abundant than nitric acid, which indicates that ammonium nitrate formation is limited by the availability of nitric acid, rather than ammonia * * *. This study's analyses suggest that reductions in NO_x emissions will be more effective in reducing secondary ammonium nitrate aerosol concentrations than reductions in ammonia emissions. Reductions in VOC emissions will reduce secondary organic aerosol concentrations and may reduce ammonium nitrate. * * * The results indicate ammonium nitrate formation is ultimately controlled by NO_x emission rates and the other species, including VOCs and background ozone, which control the rate of NO_x oxidation in winter, rather than by ammonia emissions.²¹

These findings are based on the relative abundance of ammonia relative to nitrate: There is so much ammonia present that significantly reducing its emissions would still leave ample ammonia to form ammonium nitrate. On the other hand, NO_x is scarce (relative to ammonia), so reducing it could reduce ammonium nitrate significantly.

Finally, sensitivity results from photochemical modeling were used in conjunction with the CMB results mentioned above. The 2014 RMD section on "Review of control strategy effectiveness supported by CMAQ nitrate particulate evaluation" shows the projected effect of a 50 percent reduction of NO_x emissions on PM_{2.5} concentrations annually and in shorter seasonal episodes. For the annual concentration, the NO_x reduction resulted in a predicted 5 µg/m³ PM_{2.5} reduction, while for the winter episode the NO_x reduction resulted in a predicted 28 µg/m³ PM_{2.5} reduction. 2014 RMD, p. 80. A 50 percent reduction in ammonia emissions, on the other hand, predicted PM_{2.5} reductions of only 0.1 µg/m³ on an annual basis and 0.3 µg/m³ during the winter episode. RMD, p. 81. When compared to the annual and 24-hour NAAQS of 15 and 65 µg/m³, respectively, the effect of NO_x reductions appears to be significant while the effect of ammonia reductions does not. Thus, the data and modeling results presented in the 2008 PM_{2.5} Plan, as well as the results of the cited studies, support the inclusion of NO_x and the exclusion of ammonia as PM_{2.5} attainment plan precursors, consistent with the EPA presumptions in the PM_{2.5} implementation rule.

EPA's presumption in the PM_{2.5} implementation rule is that VOC need

not be an attainment plan precursor. 40 CFR 51.1002(c)(3). This presumptive policy for VOC is largely based on uncertainties regarding the role of VOC in secondary organic aerosol (SOA) formation and in photochemical reactions that lead to the formation of certain free radical compounds (such as the hydroxyl radical [OH]), which participate in the formation of nitrate PM_{2.5}. See 72 FR 20586 at 20593 (April 25, 2007). As explained in the preamble to the rule, this presumption may not be technically justified for a particular nonattainment area, i.e., where emissions of VOC significantly contribute to PM_{2.5} concentrations in the specific nonattainment area at issue. 72 FR 20586 at 20590–93, 20596–97. States or EPA may conduct a technical demonstration to reverse the presumptive exclusion of VOC as a PM_{2.5} attainment plan precursor based on the weight of evidence of available technical and scientific information. *Id.*

We note that because the SJV is designated and classified as extreme nonattainment for the 8-hour ozone standard, VOC emission sources in this area are already subject to specific control requirements under subpart 2 of title I, part D of the Act. Nevertheless, EPA examined the available evidence on the effect of VOC reductions on ambient PM_{2.5} levels in the SJV, consistent with the PM_{2.5} implementation rule.

The 2008 PM_{2.5} Plan contains inconclusive information on whether VOC should be considered a PM_{2.5} attainment plan precursor for the SJV nonattainment area. On the one hand, some information in the Plan indicates that VOC reductions may contribute to reduced ambient PM_{2.5} levels in the area. Table 2 in Appendix G (p. G–21) gives an organic carbon range of 38–49 percent of the total PM_{2.5} on an annual basis. This includes a secondary organic aerosol (SOA) contribution of 2–5 percent of total annual PM_{2.5}. RMD at 19. This SOA contribution to overall PM_{2.5} levels appears to be non-negligible, although it may not necessarily be significant. The 2008 PM_{2.5} Plan also states: "Secondary organic aerosols (SOA) contribute to a significant fraction of PM_{2.5}. SOA is organic carbon particulate formed in the photochemical oxidation of anthropogenic and biogenic VOC precursor gases. Aromatic compounds are believed to be efficient SOA producers contributing to this secondary particulate." 2008 PM_{2.5} Plan, p. 3–8.

On a 24-hour episodic basis, the contribution of SOA could theoretically be higher than the annual 2–5 percent, but SOA is formed mainly in the

summer and so tends to be lower for the winter episodes of most concern in the SJV, due to decreased photochemical activity when the SJV winter's fog and clouds partially block sunlight. The SOA contribution to 24-hour PM_{2.5} is thus smaller than for annual PM_{2.5}. Finally, the RMD at page 82 contains sensitivity analyses for VOC, similar to the ones described above for NO_x and ammonia. The 2014 RMD concludes: "Finding: VOC reduction is effective for the annual standard and the winter episode for reduction of total carbon secondary particulates." It is not clear whether this refers only to SOA or to all secondary particulates including ammonium nitrate. The various statements above indicate VOC reductions may contribute to reducing ambient PM_{2.5} levels.

On the other hand, some statements in the Plan indicate VOC should not be considered a PM_{2.5} attainment plan precursor. In response to comments on the VOC issue submitted during the District's public comment period, the Plan states that the "modeling has shown that VOC reductions are not as effective in reducing secondary PM_{2.5} as NO_x or SO₂ reductions" and that "[a]ll of the technical evaluations for CRPAQS and prior assessments of regional particulate models have indicated that NO_x is the dominant factor and VOC and ammonia are not." 2008 PM_{2.5} Plan, pp. J–9 and p. J–19. These statements reflect the District's conclusion that VOC should not be considered an attainment plan precursor. This conclusion was also later explicitly stated by CARB. CARB VOC supplement. In addition, CARB later clarified that statements in the Receptor Modeling Document (cited above) were not intended to address the question of whether VOC should be a PM_{2.5} attainment plan precursor, and that the methodology used in the RMD does not substitute for actual photochemical modeling performed by CARB. (Personal communication, Karen Magliano, CARB, January 26, 2011.) As noted above, EPA agrees that the CMAQ photochemical modeling is the primary basis for the Plan's attainment demonstration.

Given the later and more definitive statements against VOC as an attainment plan precursor, overall the evidence on SOA does not constitute a technical demonstration that VOC is a PM_{2.5} attainment plan precursor in the San Joaquin Valley, and does not overcome the negative presumption for VOC as a PM_{2.5} attainment plan precursor.

However, the Plan's inconsistency on VOC as an attainment plan precursor applies not just to the SOA just discussed, but also to the indirect role

²¹ Quote from Lurmann, F. *et al.*, 2006, "Processes Influencing Secondary Aerosol Formation in the San Joaquin Valley During Winter," *Journal of the Air & Waste Management Association*, (56): 1679–1693, cited at 2008 PM_{2.5} Plan p. 3–10.

of VOC, which also requires a conclusion on its precursor status. VOC may be a PM_{2.5} precursor not just via formation of SOA, but also via its participation in the oxidant chemistry that leads to nitrate formation, a necessary step in the formation of ammonium nitrate PM_{2.5}. As noted in the preamble to the PM_{2.5} implementation rule at pp. 20592–20593, the lightest organic molecules can participate in atmospheric chemistry processes that result in the formation of ozone and certain free radical compounds (such as the hydroxyl radical [OH]) and these in turn participate in oxidation reactions to form secondary organic aerosols, sulfates, and nitrates. NO_x emissions must be oxidized to nitric acid before they form particulate ammonium nitrate. Two pathways for this oxidation to occur are (1) daytime oxidation by OH, which VOC radicals help create and which could be affected by VOC controls, and (2) nighttime oxidation by ozone, which might not be affected by VOC controls in the area.²²

Some statements in the Plan seem to favor VOC as an attainment plan precursor in this indirect role. The discussion in the 2008 PM_{2.5} Plan regarding ammonium nitrate (at p. 3–10, quoted above) also refers to VOC, which is identified as one of the controlling factors in NO_x oxidation (which leads to ammonium nitrate PM_{2.5}): “Reductions in VOC emissions will reduce secondary organic aerosol concentrations and may reduce ammonium nitrate.” The Plan also states: “Relatively low non-methane organic compounds/nitrogen oxide ratios indicate the daytime photochemistry is VOC, sunlight, and background-ozone limited in winter.” *Id.* Although these are only generic statements, if nitrate formation is VOC-limited under some circumstances, then VOC emissions reductions could lead to ambient PM_{2.5} reductions. On the other hand, in this same section, the Plan states that “entrainment of aerosol nitrate formed aloft at night may explain the spatial homogeneity of nitrate in the San Joaquin Valley”. *Id.* Since this nighttime pathway may not be VOC-limited, overall it is not clear whether VOC reductions would be effective for reducing PM_{2.5}.

Given the inconclusive statements about VOC in the Plan, EPA reviewed the results of several modeling and monitoring studies of PM_{2.5} in the San Joaquin Valley, and previously proposed a technical demonstration that VOC should be a plan precursor. See 75 F 74518, 74530. Some of the study

documents EPA reviewed are available on the “Central California Air Quality Studies” Web site (at <http://www.arb.ca.gov/airways>) and/or are cited in the Plan and are reports from contractors involved in CRPAQS. Others are papers from peer-reviewed journals and are analyses using CRPAQS data or data from the earlier 1995 Integrated Monitoring Study (IMS95 study). We found that four monitoring studies and six modeling studies were relevant to the VOC precursor issue. A list of these studies as well as further information on them and excerpts from them are provided in section I.E. of the TSD. The monitoring studies all contain evidence that the VOC pathway for nitrate creation is important at least some of the time but differ as to how important it is relative to other pathways such as the nighttime ozone pathway, and are not conclusive on the efficacy of VOC controls. As noted above, the study by Lurmann *et al.*, which is the most recent of the monitoring studies and which was quoted in the Plan, stated that the observed spatial homogeneity of ammonium nitrate could be explained by nighttime production aloft via the ozone pathway, followed by mixing down to the surface, as opposed to production during the day via the VOC pathway. As noted in the CARB VOC supplement, CARB technical staff involved in the CRPAQS work cite this study and agree with this conclusion.

Unlike the monitoring studies, most of the modeling studies explicitly assessed the relative effectiveness of precursor controls, simulating the effect of 50 percent reductions in NO_x, ammonia, and VOC. (One study does not explicitly address the VOC reductions, but states that background ozone flowing in from outside the nonattainment area is the most important oxidant, so that VOC controls in the SJV would have little effect.) The two earliest modeling studies are based on photochemical box modeling and differ on whether VOC controls would significantly affect PM_{2.5}. Three later studies use more sophisticated photochemical grid models and find VOC control to be effective, though generally less so than NO_x control. One study predicts VOC control to be about two-thirds as effective as NO_x control. The second study predicted VOC control to be effective, though only by a relatively small amount, at most 10 percent for a 50 percent reduction in VOC emissions, or only on certain days. The third grid modeling study predicts VOC control to give slightly more benefit than NO_x control. In our November 2010 proposal, EPA indicated

that although the models, input data, and results differ among these studies, the studies indicated that control of VOC could significantly reduce PM_{2.5} concentrations in the SJV.

In its VOC supplement, however, CARB provided additional interpretation of these same studies. CARB makes several points about the modeling studies that argue against VOC as an attainment plan precursor in the SJV, namely their unreasonableness for this assessment and the lack of benefits shown in some of them. On the first of these main points, CARB argues that the hypothetical 50 percent VOC reduction evaluated in the modeling studies is not a reasonable basis for assessing VOC as a plan precursor, for at least two reasons. Its first reason is that this amount of reductions may not be feasible, especially given the VOC reductions already undertaken as part of other plans, such as the ozone plan for the SJV area. EPA agrees that reasonable assumptions are important for an attainment plan precursor technical demonstration; however, without an assessment from the State of the feasibility of a 50 percent VOC reduction, the model results cannot be dismissed on that basis. Indeed, an assessment of the feasible degree of VOC control in a RACM/RACT analysis would be required if VOC were considered an attainment plan precursor.²³

The second reason offered in the CARB VOC supplement for why the modeled 50 VOC percent reduction may not be a reasonable basis for evaluation of VOC as an attainment plan precursor is that it considers VOC in isolation from the other PM_{2.5} precursors. CARB argues that because precursors interact in complex ways in the atmosphere, the expected effect of VOC controls should be evaluated in the context of the expected emission levels of the other precursors in the attainment demonstration. In particular, CARB notes that the existing NO_x control program will provide substantial NO_x emission reductions, and this will affect the benefit of VOC controls. Thus, it argues that while the modeling studies’ VOC reduction results may be technically correct in themselves, they do not translate directly into measurable reductions in ambient PM_{2.5} concentrations per ton of VOC, nor do they support a need for additional VOC controls in the PM_{2.5} control strategy.

²³ See 72 FR 20586 at 20591 (“Assessments of which source categories are more cost effective or technically feasible to control should be part of the later RACT and RACM assessment, to occur after the basic assessment of which precursors are to be regulated is completed.”).

²² Lurmann, F. *et al.*, 2006, *op cit.*, p. 1688.

EPA agrees that the studies highlight a need to consider multiple precursor effects at once, in the context of what is needed for attainment in the target year, and that it makes sense to examine precursor interactions in assessing plan precursors.

Another main point made by CARB in its VOC supplement about the modeling studies is that the more sophisticated ones, based on photochemical grid modeling, tended to show small benefits and sometimes disbenefits²⁴ from VOC controls in the more realistic scenarios modeled. CARB pointed out that when NO_x reductions are considered at the same time, two studies showed PM_{2.5} disbenefits from VOC reduction at multiple locations, though in one this occurred only at some times. (No similar disbenefit was seen for additional NO_x reductions when they were considered simultaneously with VOC reductions.) Thus, under the realistic assumption that NO_x reductions will occur as a result of the Plan control strategy, according to these studies additional VOC reductions could be counterproductive, making it more difficult for the SJV to come into PM_{2.5} attainment. EPA agrees that these analyses raise legitimate questions about the efficacy of VOC reductions and do not support a reversal of the PM_{2.5} implementation rule's presumption that VOC is not an attainment plan precursor.

Finally, CARB notes that one of the studies showed a benefit from VOC control only at the very highest PM_{2.5} levels, above 80 µg/m³, well above current design values in the SJV which are more in the range of 50–60 µg/m³. See CARB VOC supplement, p. 10.²⁵

Based on an examination of model output throughout the episode, CARB hypothesizes that a different chemical regime is entered at high levels, for which this VOC sensitivity does occur, though this hypothesis apparently has not been explored with modeling tools such as process analysis. CARB staff involved in the CRPAQS modeling effort believes that, under current SJV

conditions, the nighttime nitrate production route via background ozone is the main oxidation driver for nitrate PM_{2.5} in the SJV, and that the VOC-sensitive daytime oxidant route is of less importance. CARB VOC supplement, p. 10.

After careful review, EPA is proposing to determine that the information submitted by CARB in the VOC supplement raises significant questions about the efficacy of VOC controls for reducing ambient PM_{2.5} concentrations in the SJV and demonstrates that the available technical information does not provide a sufficient basis for reversing the presumption in the PM_{2.5} implementation rule that VOC is not an attainment plan precursor in this area. Accordingly, EPA proposes to concur with CARB's determination that at this time, VOC should not be an attainment plan precursor in the SJV area.²⁶ EPA also proposes to concur with the evaluation in the 2008 PM_{2.5} Plan that, at this time, ammonia does not need to be considered an attainment plan precursor for purposes of attaining the 1997 PM_{2.5} NAAQS in the SJV.

EPA's proposed concurrence on excluding ammonia and VOC as attainment plan precursors in the SJV is limited to the SIP for attainment of the 1997 PM_{2.5} NAAQS. EPA revised the 24-hour PM_{2.5} standards in 2006 to lower them to 35 µg/m³. Evaluation of whether ammonia and VOC controls may be necessary for the expeditious attainment of the 2006 PM_{2.5} standards and any future revised standards may show that such controls would significantly contribute to lower PM_{2.5} levels in the SJV.

4. Extension of the Attainment Date

CAA section 172(a)(2) provides that an area's attainment date "shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment * * *, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as

nonattainment considering the severity of nonattainment and the availability and feasibility of pollution control measures."

Because the effective date of designations for the 1997 PM_{2.5} standards is April 5, 2005 (70 FR 944), the initial attainment date for PM_{2.5} nonattainment areas is as expeditiously as practicable but not later than April 5, 2010. For any area that is granted a full five-year attainment date extension under section 172, the attainment date would be not later than April 5, 2015.

Section 51.1004 of the PM_{2.5} implementation rule addresses the attainment date requirement. Section 51.1004(b) requires a state to submit an attainment demonstration justifying its proposed attainment date and provides that EPA will approve an attainment date when we approve that demonstration.

States that request an extension of the attainment date under CAA section 172(a)(2) must provide sufficient information to show that attainment by April 5, 2010 is impracticable due to the severity of the nonattainment problem in the area and the lack of available and feasible control measures to provide for faster attainment. 40 CFR 51.1004(b). States must also demonstrate that all RACM and RACT for the area are being implemented to bring about attainment of the standard by the most expeditious alternative date practicable for the area. 72 FR 20586 at 20601.

The 2008 PM_{2.5} Plan includes a demonstration that the attainment date for the SJV should be April 5, 2015, i.e., that the area qualifies for the full five-year extension of the attainment date allowable under section 172(a)(1). This demonstration is found in Chapter 9 of the 2008 PM_{2.5} Plan and is updated by information in Appendix C of the 2011 Progress Report.

SJV's PM_{2.5} nonattainment problem is severe. The area typically records the highest ambient PM_{2.5} levels in the nation, with the 2008–2010 design value for the annual PM_{2.5} levels in urban Bakersfield area of 21.2 µg/m³. See EPA, Air Quality System, Design Value Report, June 1, 2011. The PM_{2.5} problem in the San Joaquin Valley is complex, caused by both direct and secondary PM_{2.5} and compounded by the area's topographical and meteorological conditions that are very conducive to the formation and concentration of PM_{2.5} particles. See 2008 PM_{2.5} plan, Chapter 3.

As discussed in section V.B.2.a. above, the District's strategy for attaining the PM_{2.5} standard relies on reductions of direct PM_{2.5} as well as the PM_{2.5} precursor pollutants NO_x and

²⁴ VOC typically contributes to the formation of ozone and hydroxyl, which through its oxidizing effect can help convert NO_x emissions to particulate nitrate. However, there are also direct VOC–NO_x interactions that act as a "sink", forming e.g. peroxyacetyl nitrate (PAN), and removing both VOC and NO_x from the photochemical reactions that lead to ozone and some particulate. Under some circumstances, VOC reductions can lessen the effect of this "sink", so that more NO_x remains to form particulate, resulting in a PM_{2.5} disbenefit from VOC control.

²⁵ According to monitoring data in EPA's AQ5 database, there were 172 values over 80 µg/m³ during 1999–2002; by contrast, there were only 24 values over 80 during 2007–2010. EPA's Air Quality System, Violation Day Count Report, May 13, 2011.

²⁶ In its approval of the SJV 2003 PM₁₀ plan, EPA determined that for the purposes of CAA section 189(b)(1)(B) and (e) and in the absence of final data from CRPAQS, VOC did not contribute significantly to PM₁₀ levels which exceed the standards in the SJV. See 69 FR 30006, 30011 (May 26, 2004). We note that EPA made that 2004 finding for a different NAAQS (the 24-hour and now revoked annual PM₁₀ standards of 150 µg/m³ and 50 µg/m³, respectively), based on criteria for evaluation of precursors that differ from those provided in the PM_{2.5} implementation rule. See 72 FR 20586 at 20590–20594 and 40 CFR § 51.1000.

SO_x. The SJV needs significant reductions in direct PM_{2.5} and NO_x to demonstrate attainment. Further reducing these pollutants is challenging because the State and District have already adopted stringent control measures for most sources of direct PM_{2.5} and NO_x emissions. Moreover, attainment in the SJV depends upon emissions reductions that offset the emissions increases associated with projected increases in population.

Reductions of direct PM_{2.5} are achieved primarily from open burning, commercial charbroiling, residential wood combustion, and in-use truck and bus control measures. These types of control measures present special implementation challenges (*e.g.*, the large number of individuals subject to regulation and the difficulty of applying conventional technological control solutions). NO_x reductions come largely from District rules for fuel combustion sources and from the State's mobile source rules.

Because of the necessity of obtaining additional emissions reductions from these source categories in the SJV and the need to conduct significant public

outreach if applicable control approaches are to be effective, EPA agrees with the District and CARB that the 2008 PM_{2.5} Plan reflects expeditious implementation of the available control programs during the 2008–2014 time frame. EPA also agrees that the implementation schedule for the District's revised stationary source controls is expeditious, taking into account the time necessary for purchase and installation of the required control technologies.

In addition, the State has adopted standards for many categories of on-road and off-road vehicles and engines, gasoline and diesel fuels, as well as improvements to California's vehicle inspection and maintenance program, and programs requiring the retrofitting and replacement of in-use trucks, buses and off-road equipment. The State is implementing these rules and programs as expeditiously as practicable, and it is not feasible to accelerate the schedule for new emissions standards under the State and Federal mobile source control program.

EPA also expects that the District and CARB will continue to investigate

opportunities to accelerate progress toward attainment as new control opportunities arise, and that these agencies will promptly adopt and expeditiously implement any new measures found to be feasible in the future.

As discussed in section V.B.3. above, we are proposing to approve the RACM/ RACT demonstration in the SJV 2008 PM_{2.5} SIP. As discussed below in section V.C.6., we are also proposing to approve the attainment demonstration in the SIP. Based on these proposed approvals as well as the Plan's demonstration that April 5, 2015 is the most expeditious attainment date practicable, EPA is proposing to grant an extension of the attainment date for the 1997 PM_{2.5} standards in the SJV to April 5, 2015 pursuant to CAA section 172(b)(2) and 40 CFR 51.1004(b).

5. Attainment Demonstration

Table 7 below summarizes the reductions that are relied on in the 2008 PM_{2.5} Plan to demonstrate attainment by April 5, 2015.

TABLE 7—SUMMARY OF REDUCTIONS NEEDED FOR SJV'S PM_{2.5} ATTAINMENT DEMONSTRATION
[Tons per average annual day]

	Direct PM _{2.5}	NO _x	SO ₂
A. 2005 emissions level	86.0	575.4	26.4
B. 2014 attainment target	63.3	291.2	24.6
C. Total reductions needed by 2014 (A–B)	22.7	284.2	1.8
D. Adjustments to baseline/reductions from baseline (pre-2007) measures	13.7	258.1	1.0
Percent of total reductions from baseline measures/adjustments	60%	91%	56%
E. Reductions needed from new measures (C–D)	9.0	26.1	0.8
Percent of total reductions needed from new measures	40%	9%	44%

Note: The 2005 emissions level, 2014 attainment target, and total reductions needed by 2014 remain unchanged from the November 30, 2010 proposal.

As shown in this table, the majority of the emissions reductions that the State projects are needed for PM_{2.5} attainment in the SJV by 2015 come from baseline reductions. These baseline reductions include not only the benefit of numerous adopted District and State measures which generally have been approved by EPA either

through the SIP process or the CAA section 209 waiver process but also the effect of the recent economic recession on projected future inventories. See 2011 Progress Report, Appendix E and Appendices A and B of the TSD. The remaining reductions needed for attainment are to be achieved through the District's and CARB's commitments

to reduce emissions in the SJV. Since the submittal of the 2008 PM_{2.5} Plan and 2007 State Strategy, the District and CARB have adopted measures (summarized in Table 8 below) that can be credited toward reducing their aggregate emissions reduction in their enforceable commitments.

TABLE 8—REDUCTIONS NEEDED FOR ATTAINMENT REMAINING AS COMMITMENTS BASED ON SIP-CREDITABLE MEASURES
[Tons per average annual day in 2014]

	Direct PM _{2.5}	NO _x	SO _x
A. Total reductions needed from baseline and control strategy measures to attain	22.7	284.2	1.8
B. Reductions from baseline measures	13.7	258.1	1.0
C. Total reductions from approved/proposed for approval measures	6.0	13.2	3.6
Total reductions remaining as commitments (A–B–C)	3.0	12.9	0.0
Percent of total reductions needed remaining as commitments	13.2%	4.5%	0.0%

a. Enforceable Commitments

As shown above, measures already adopted by the District and CARB (both prior to and as part of the 2008 PM_{2.5} Plan) provide the majority of emissions reductions the State projects are needed to demonstrate attainment. The balance of the needed reductions is in the form of enforceable commitments by the District and CARB.

The CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.²⁷ Once EPA determines that circumstances warrant consideration of an enforceable commitment, it considers three factors in determining whether to approve the CAA requirement that relies on the enforceable commitment: (a) Does the commitment address a limited portion of the CAA requirement; (b) is the state capable of fulfilling its commitment; and (c) is the commitment for a reasonable and appropriate period of time.²⁸

With respect to the 2008 PM_{2.5} Plan and 2007 State Strategy, circumstances

²⁷ Commitments approved by EPA under CAA section 110(k)(3) are enforceable by EPA and citizens under CAA sections 113 and 304, respectively. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. See, e.g., *American Lung Ass'n of N.J. v. Kean*, 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc. v. N.Y. State Dept. of Env. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't v. Deukmejian*, 731 F. Supp. 1448, recon. granted in par, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air v. South Coast Air Quality Mgt. Dist.*, No. CV 97-6916-HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under CAA section 179(a), which starts an 18-month period for the State to correct the non-implementation before mandatory sanctions are imposed.

CAA section 110(a)(2)(A) provides that each SIP "shall include enforceable emission limitations and other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act." Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A). The language in these sections of the CAA is quite broad, allowing a SIP to contain any "means or techniques" that EPA determines are "necessary or appropriate" to meet CAA requirements, such that the area will attain as expeditiously as practicable, but no later than the designated date. Furthermore, the express allowance for "schedules and timetables" demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved.

²⁸ The U.S. Court of Appeals for the Fifth Circuit upheld EPA's interpretation of CAA sections 110(a)(2)(A) and 172(c)(6) and the Agency's use and application of the three factor test in approving enforceable commitments in the 1-hour ozone SIP for Houston-Galveston. *BCCA Appeal Group et al. v. EPA et al.*, 355 F.3d 817 (5th Cir. 2003).

warrant the consideration of enforceable commitments as part of the attainment demonstration for this area. As shown in Table 7 above, the majority of emissions reductions that are needed to demonstrate attainment and RFP in the SJV come from rules and regulations that were adopted prior to 2007, i.e., they come from the baseline measures.

As a result of these already-adopted District and State measures, most sources in the San Joaquin Valley nonattainment area were already subject to stringent rules prior to the development of the 2007 State Strategy and the 2008 PM_{2.5} Plan, leaving fewer and more technologically challenging opportunities to reduce emissions. In the 2008 PM_{2.5} Plan and the 2009 revisions to the 2007 State Strategy, the District and CARB identified potential control measures that could achieve the additional emissions reductions needed for attainment. However, the timeline needed to develop, adopt, and implement these measures went well beyond the April 5, 2008²⁹ CAA deadline to submit the PM_{2.5} plan. As discussed above and below, since 2007, the District and State have made progress in adopting measures to meet their commitments, but have not completely fulfilled them. Given these circumstances, the 2008 PM_{2.5} Plan's and 2007 State Strategy's reliance on enforceable commitments is warranted. We now consider the three factors EPA uses to determine whether the use of enforceable commitments in lieu of adopted measures to meet CAA planning requirements is approvable.

i. The Commitment Represents a Limited Portion of Required Reductions

For the first factor, we look to see if the commitment addresses a limited portion of a statutory requirement, such as the amount of emissions reductions needed for attainment in a nonattainment area.

As shown in Table 8, the remaining portion of the enforceable commitments in the 2008 PM_{2.5} Plan and the 2007 State Strategy are 3.0 tpd direct PM_{2.5} and 12.6 tpd NO_x after accounting for measures that are either approved or proposed for approval and revisions to the future year baseline inventories resulting from changes to the Plan's economic forecasts and other factors. When compared to the total reductions needed by 2014 for PM_{2.5} attainment in

the SJV on a per-pollutant basis, these remaining commitments represent approximately 13.2 percent of the direct PM_{2.5} and 4.5 percent of the NO_x needed to attain the 1997 PM_{2.5} standards in the SJV.

We find that the reductions remaining as enforceable commitments in the 2008 PM_{2.5} Plan and 2007 State Strategy represent a limited portion of the total emissions reductions needed to meet the statutory requirement for attainment in the SJV and therefore satisfy the first factor. The level of reductions remaining as commitments is reasonably close to the 10 percent range that EPA has historically accepted in approving attainment demonstrations.³⁰

ii. The State Is Capable of Fulfilling Its Commitment

For the second factor, we consider whether the State and District are capable of fulfilling their commitments. As discussed above, CARB has adopted and submitted a 2009 State Strategy Status Report and a 2011 Progress Report, which update and revise the 2007 State Strategy. These reports show that CARB has made significant progress in meeting its enforceable commitments for the San Joaquin Valley and several other nonattainment areas in California. Additional ongoing programs that address locomotives and in-use agricultural equipment have yet to be quantified but are expected to reduce NO_x and direct PM_{2.5} emissions in the SJV by 2014. See 2011 Progress Report, Appendix E, page 2.

The District has already exceeded its commitments to reduce NO_x emissions in 2014 by 9 tpd and SO_x emissions by 0.9 tpd and has substantially met its commitment to reduce direct PM_{2.5} emissions by 6.7 tpd. See Tables 3 and 4. In addition, it is expecting to adopt revisions to District Rule 4702 (Reciprocating Internal Combustion Engines) later this year that are likely to achieve substantial NO_x reductions by 2014. See SJVUAPCD, Draft Staff Report For Draft Amendments To Rule 4702 (Internal Combustion Engines-Phase 2), September 9, 2010. It is also continuing to work to identify and adopt additional measures to reduce emissions. Table F-5 in the TSD describes a number of the feasibility studies currently underway at the District.

Beyond the rules discussed above, both CARB and the District have well-funded incentive grant programs to reduce emissions from the on- and off-

²⁹ The 2007 State Strategy was developed to address both the 1997 PM_{2.5} NAAQS and the 1997 8-hour Ozone NAAQS. The 8-hour ozone SIPs were due in November 2007, and the development and adoption of the State Strategy was timed to coordinate with this submittal date. 2007 State Strategy, p. 1.

³⁰ See, for example, our approval of the SJV PM₁₀ Plan at 69 FR 30005 (May 26, 2004), the SJV 1-hour ozone plan at 75 FR 10420 (March 8, 2010), and the Houston-Galveston 1-hour ozone plan at 66 FR 57160 (November 14, 2001).

road engine fleets. See, for examples, SJV PM_{2.5} Progress Report, section 2.3. Reductions from several of these programs have yet to be quantified and/or credited in the attainment demonstration but efforts are underway to do so. See, for example, "Statement of Principles Regarding the Approach to State Implementation Plan Creditability of Agricultural Equipment Replaced Incentive Programs Implemented by the USDA Natural Resources Conservation Service and San Joaquin Valley Air Pollution Control District," December 2010.

Finally, the SJV is designated nonattainment for the 2006 24-hour PM_{2.5} standard. The State must submit a plan to address attainment of that standard by December 2012. 74 FR 58688, 58689 (November 13, 2009).

Given the evidence of the State's and District's efforts to date and their continuing efforts to reduce emissions, we find that the State and District are capable of meeting their enforceable commitments to reduce emissions of direct PM_{2.5} and NO_x by 2014 to the levels needed to attain the 1997 PM_{2.5} standards in the San Joaquin Valley by its proposed attainment date of April 5, 2015.

iii. The Commitment Is for a Reasonable and Appropriate Timeframe

For the third and last factor, we consider whether the commitment is for a reasonable and appropriate period of time.

In order to meet the commitments to reduce emissions to the levels needed to attain the 1997 PM_{2.5} standards in the San Joaquin Valley, the 2008 PM_{2.5} Plan and 2007 State Strategy included an ambitious rule development, adoption, and implementation schedules, which both the District and CARB have substantially met. EPA considers these schedules to provide sufficient time to achieve by 2014 the few remaining reductions needed to attain by the proposed attainment date of April 5, 2015. We, therefore, conclude that the third factor is satisfied.

6. Proposed Action on the Attainment Demonstration

In order to approve a SIP's attainment demonstration, EPA must make several findings and approve the plan's proposed attainment date.

First, we must find that the demonstration's technical bases, including the emissions inventories and air quality modeling, are adequate. As discussed above in sections V.A. and V.C.2, we are proposing to approve both the emissions inventories and the air quality modeling on which the SJV 2008

PM_{2.5} Plan's attainment demonstration and other provisions are based.

Second, we must find that the SIP submittal provides for expeditious attainment through the implementation of all RACM and RACT. As discussed above in section V.B., we are proposing to approve the RACM/RACT demonstration in the SJV PM_{2.5} SIP.

Third, EPA must find that the emissions reductions that are relied on for attainment are creditable. As discussed in section V.C.5., the 2008 PM_{2.5} Plan relies principally on adopted and approved/waived rules to achieve the emissions reductions needed to attain the 1997 PM_{2.5} standards in the SJV by April 5, 2015. The balance of the reductions is currently in the form of enforceable commitments that account for 13.2 percent of the direct PM_{2.5} and 4.5 percent of the NO_x emissions reductions needed from 2005 levels for attainment. See Table 8.

EPA has previously accepted enforceable commitments in lieu of adopted control measures in attainment demonstrations when the circumstances warrant it and the commitments meet three criteria. As discussed above in section V.C.5., we find that circumstances here warrant the consideration of enforceable commitments and that the three criteria are met: (1) The commitments constitute a limited portion of the required emissions reductions, (2) both the State and the District have demonstrated their capability to meet their commitments, and (3) the commitments are for an appropriate timeframe. Based on these conclusions, we propose to allow the State to rely on these limited enforceable commitments in its attainment demonstration.

Finally, for a PM_{2.5} nonattainment area that cannot attain within five years of its designation as nonattainment, EPA must grant an extension of the attainment date in order to approve the attainment demonstration for the area. As discussed above in section V.C.4., we propose to determine that a five-year extension of the attainment date is appropriate given the severity of the nonattainment problem in the SJV and availability and feasibility of control measures and, therefore, to grant the State's request to extend the attainment date in the SJV to April 5, 2015.

For the foregoing reasons, we are proposing to approve the attainment demonstration in the SJV 2008 PM_{2.5} SIP.

D. Reasonable Further Progress Demonstration

1. Requirements for RFP

CAA section 172(c)(2) requires that plans for nonattainment areas shall provide for reasonable further progress (RFP). RFP is defined in section 171(1) as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date."

The PM_{2.5} implementation rule requires submittal of an RFP plan at the same time as the attainment demonstration for any area for which a state requests an extension of the attainment date beyond 2010. For areas for which the state requests an attainment date extension to 2015, such as SJV, the RFP plan must demonstrate that in the applicable milestone years of 2009 and 2012, emissions in the area will be at a level consistent with generally linear progress in reducing emissions between the base year and the attainment year. 40 CFR 51.1009(d). States may demonstrate this by showing that emissions for each milestone year are roughly equivalent to benchmark emissions levels for direct PM_{2.5} and each PM_{2.5} attainment plan precursor addressed in the plan. The steps for determining the benchmark emissions levels to demonstrate generally linear progress are provided in 40 CFR 51.1009(f).

The RFP plan must describe the control measures that provide for meeting the reasonable further progress milestones for the area, the timing of implementation of those measures, and the expected reductions in emissions of direct PM_{2.5} and PM_{2.5} attainment plan precursors. See 40 CFR 51.1009(c).

2. The RFP Demonstration in the SJV 2008 PM_{2.5} Plan

CARB provided an updated and revised RFP demonstration for the SJV in Appendix C of the 2011 Progress Report. The demonstration addresses direct PM_{2.5}, NO_x, and SO₂ and uses the 2005 annual average day inventory as the base year inventory and 2014 as the attainment year. The control strategy measures that are relied on to demonstrate RFP and the emissions reductions from each measure in each year are given in the 2011 Progress Report, Appendix C, Table C-1 and supplemental information provided by the District.³¹ The revised RFP

³¹ See SJVUAPCD, "Table 3-1 Adjusted PM_{2.5} Emission Inventory; Table 3-2 Adjusted NO_x

demonstration is shown in Table 9 below.

TABLE 9—RFP DEMONSTRATION USING UPDATED CONTROL MEASURES AND BASELINE DATA
[Tons per annual average day]

	Direct PM _{2.5}	NO _x	SO ₂
2009			
Benchmark emissions level	76	449	26
Revised projected controlled emissions level	73	387	23
Emissions below benchmark emissions level	–3	–62	–3
Percent below benchmark emissions level	–4%	–14%	–12%
2012			
Benchmark emissions level	68	354	25
Revised projected controlled emissions level	71	336	20
Emissions above/below benchmark emissions level	+3	–18	–5
Percent above/below benchmark emissions level	+4%	–5%	–20%

Source: Table H–4 in the TSD.

3. Proposed Action on the RFP Demonstration

EPA has reviewed the revised RFP demonstration in the 2011 Progress Report and has determined that it was prepared consistent with applicable EPA regulations and policies. See Section II.H of the TSD. As can be seen from Table 9, controlled emissions levels for direct PM_{2.5}, NO_x, and SO_x were below the benchmarks for 2009, demonstrating that the SJV met its RFP targets in that year. For 2012, the projected controlled emissions levels for direct PM_{2.5} are only slightly above the benchmark (by about 4 percent) and the projected controlled levels for NO_x and SO_x are substantially below the benchmarks. We find that, overall, these projected controlled emissions levels represent generally linear progress for 2012.

Based on our evaluation, which is summarized above and discussed in detail in section II.H. of the TSD, and our proposed concurrence (discussed above in section V.C.3.) with the State's determination that SO_x and NO_x are and VOC and ammonia are not attainment plan precursors per 40 CFR 51.1002(c), we propose to find that the SJV 2008 PM_{2.5} SIP provides for reasonable further progress as required by CAA section 172(c)(2) and 40 CFR 51.1009 and that the SJV has met its 2009 RFP benchmarks.³²

E. Contingency Measures

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), all PM_{2.5} attainment plans must include contingency measures to be implemented if an area fails to meet RFP (RFP contingency measures) and contingency measures to be implemented if an area fails to attain the PM_{2.5} NAAQS by the applicable attainment date (attainment contingency measures). These contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly without significant additional action by the state. 40 CFR 51.1012. They must also be measures not relied on in the plan to demonstrate RFP or attainment and should provide SIP-creditable emissions reductions equivalent to approximately one year of the emissions reductions needed for RFP. 72 FR 20586 at 20642–43. Finally, the SIP should contain trigger mechanisms for the contingency measures and specify a schedule for their implementation. *Id.*

Contingency measures can include Federal, State and local measures already adopted and implemented or scheduled for implementation that provide emissions reductions in excess of the reductions needed to provide for RFP or expeditious attainment. EPA has approved numerous SIPs under this interpretation. See, for example, 62 FR 15844 (April 3, 1997) direct final rule approving Indiana ozone SIP revision;

62 FR 66279 (December 18, 1997), final rule approving Illinois ozone SIP revision; 66 FR 30811 (June 8, 2001), direct final rule approving Rhode Island ozone SIP revision; 66 FR 586 (January 3, 2001), final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions; and 66 FR 634 (January 3, 2001), final rule approving Connecticut ozone SIP revision. The State may use the same measures for both RFP and attainment contingency if the measures will provide reductions in the relevant years; however, should measures be triggered for failure to make RFP, the State would need to submit replacement contingency measures for attainment purposes.

2. Contingency Measures in the SJV 2008 PM_{2.5} Plan

There are several types of contingency measures in the 2008 PM_{2.5} SIP: A new commitment to an action by the District, surplus reductions in the RFP demonstration, post-2014 emissions reductions, a contingency provision in an adopted rule, and reductions from incentive funds and control strategy measures that are not relied on in the attainment and RFP demonstrations. We discuss each of these types of contingency measures below.

The Plan does not calculate the emissions reductions that are equivalent to one year's worth of RFP. Based on information in the Plan, we have calculated one year's worth of RFP to be 2.5 tpd direct PM_{2.5}, 31.6 tpd NO_x, and 0.2 tpd SO₂. See section II.I. of the TSD.

Emission Inventory; and Table 3–3 Adjusted SO_x Emission Inventory," March 2011.

³² As discussed above in section V.A., CARB has recently updated the inventories for several mobile source categories and estimates that these updates

would reduce, if incorporated into those inventories, the Plan's 2005 base year NO_x inventory by approximately 6 percent and the direct PM_{2.5} inventory by approximately 5 percent. CARB Progress Report supplement, Attachment 1. EPA

evaluated the potential impact of revising the 2005 base year inventories on the RFP demonstration and found that the Plan would continue to show the RFP. See Section II.H. of the TSD.

Request CARB To Accelerate State Measure Implementation—This proposed contingency measure (which could function as both a RFP and attainment contingency measure), requires the District's Governing Board to adopt a resolution requesting CARB to accelerate the adoption and/or implementation of any remaining CARB control measures that have not yet been adopted or fully implemented. 2008 PM_{2.5} Plan, p. 9–7.

Under CAA section 172(c)(9) and EPA's policies³³ interpreting this section, contingency measures must require minimal additional rulemaking by the state and take effect within a few months of a failure to make RFP or to attain. This proposed contingency measure would require additional rulemaking at the District level and potentially substantial and lengthy additional rulemaking at the State level to be implemented. For these reasons, this proposed measure does not meet CAA requirements for contingency measures.

Surplus Reductions in the RFP Demonstration—In the June 2008 version of the Plan, the method used to calculate emissions reductions needed to meet RFP benchmarks withheld a certain percentage of those reductions for contingency purposes: 1 percent of the baseline PM_{2.5} inventory and 3 percent of the baseline NO_x inventory. These percentages equate to roughly 1 tpd PM_{2.5} and 17 tpd NO_x being reserved for contingency. No reserve was included for SO_x because SO_x emissions levels were projected to be below the applicable benchmarks and these excess reductions served as contingency measures. See 2008 PM_{2.5} Plan, p. 8–4.

The 2011 Progress Report updates the RFP demonstrations in the 2008 PM_{2.5} Plan. See 2011 Progress Report, Table C–1. The updated demonstration does not include a contingency measure reserve but rather shows that expected controlled emissions levels of NO_x and SO_x will be below the required RFP benchmarks. SO_x reductions that are in excess of those needed to meet RFP and contingency are reserved for PM_{2.5} contingency measures at an interpollutant trading ratio of 1 tpd SO_x to 1 tpd direct PM_{2.5}. See 2011 Progress Report, Appendix A, p. 2 and (for the trading ratio), SJV PM_{2.5} Progress Report, Table 2–2. These excess reductions are from SIP-approved or otherwise SIP-creditable adopted

measures and therefore may be used to meet the contingency measure requirement. We do not, however, agree at this time with the use of a SO_x to direct PM_{2.5} interpollutant trading ratio of 1:1 as the State has not provided an adequate technical justification for such a ratio. See Section V.D.2 above and section II.B.4.

Post-Attainment Year Emissions Reductions—The 2008 PM_{2.5} Plan relies on the incremental emissions reductions that will occur from existing controls in 2015 to provide for contingency measures for failure to attain. See p. 9–9. CARB estimates these incremental emissions reductions, including reductions expected from its In-use Truck and Bus and In-Use Off-Road Engine Rules, are 3 tpd SO₂ and 21 tpd NO_x. CARB Progress Report supplement, Attachment 2. These excess reductions are from SIP-approved or otherwise SIP-creditable adopted measures and therefore may be used to meet the contingency measure requirement.

Contingency Provision in Rule 4901 “Wood Burning Fireplace and Wood Burning Heaters”—In October, 2008, the District revised Rule 4901 to incorporate a contingency provision in section 5.6.5. This provision requires that 60 days after EPA finds the SJV nonattainment area has failed to attain the 1997 PM_{2.5} NAAQS, the District will lower the level at which mandatory curtailment of residential wood burning is required from a predicted level of 30 µg/m³ to 20 µg/m³. EPA approved this rule, including the contingency provision, on November 10, 2009. 74 FR 57907.

This attainment contingency provision in Rule 4901 meets the statutory and regulatory requirements for attainment contingency measures: It is triggered by a failure to attain, requires no additional rulemaking by the District, will be fully implemented within 60 days of being triggered, and is SIP approved. The District has preliminarily quantified the emissions reductions expected from this contingency provision at 1.6 tons of PM_{2.5} per winter average day.³⁴

Control Strategy Reductions Not Included in the RFP and/or Attainment Demonstrations—In its resolution approving the SJV PM_{2.5} Plan, CARB required the District to adopt two additional contingency measures. See CARB Resolution No. 08–28, Attachment A. These measures are revisions to SJVUAPCD's Rule 4307 (Boilers, 2 to 5 MMBtu) and Rule 4702

(Internal Combustion Engines). While the District had already included these rule revisions as Measures S–COM–2 and S–COM–6 in the Plan's control strategy, it had not estimated or included the NO_x emissions reductions from the measures in either the Plan's RFP or attainment demonstration.

The District adopted revisions to Rule 4307 in October 2008. Reductions from these rule revisions are now included in the revised RFP and attainment demonstrations in the 2011 Progress Report and are no longer in excess of those demonstrations and, therefore, cannot be used to meet the contingency measure requirement.

Revisions to Rule 4702 are not yet adopted. As discussed above, contingency measure must be fully-adopted measures. Therefore, expected emissions reductions from revisions to Rule 4702 cannot currently be used to meet the contingency measure requirement.

Emissions Reductions From Incentive Funds—As noted previously, the District has several incentive grant programs that have the potential to generate considerable emissions reductions. The 2008 PM_{2.5} Plan suggests the use of these reductions as contingency measures for failure either to meet RFP or to attain. While neither the CAA nor EPA policy bar the use of emissions reductions from incentive programs to meet all or part of an area's contingency measure obligation, the incentive programs must assure that the reductions are surplus, quantifiable, enforceable, and permanent in accordance with EPA guidance. See “Improving Air Quality with Economic Incentive Programs,” EPA–452/R–01–001 (January 2001).

The 2008 PM_{2.5} Plan does not identify the incentive grant programs expected to generate the emissions reductions, nor the quantity of the emissions reductions, that the District intends to use to meet the contingency measure requirement. Therefore, we are unable to determine if they are SIP creditable, surplus to attainment and/or RFP needs, or sufficient to provide the one-year's worth of RFP needed. For these reasons, this proposed measure does not currently meet the CAA requirements for contingency measures.

3. Proposed Action on the Contingency Measures

We are not evaluating the provisions in the 2008 PM_{2.5} SIP that address contingency measures for failure to meet the 2009 RFP benchmarks. Information in the 2011 Progress Report shows that SJV has met its 2009 benchmarks for direct PM_{2.5}, NO_x, and SO_x. See 2011

³³ See “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498 at 13512 (April 16, 1992).

³⁴ Personal communications, Jessica Ferrio, SJVUAPCD, to Frances Wicher, EPA, August 27, 2010.

Progress Report, Table C–1. Therefore, contingency measures for failure to meet the 2009 RFP benchmark no longer have any meaning or effect under the CAA and do not require any further review or action by EPA. In addition, as noted above, the purpose of RFP contingency measures is to provide a continued progress while the SIP is being revised to meet a missed RFP milestone. Failure to meet the 2009 benchmark would have required California to revise the SJV PM_{2.5} Plan to assure that the next milestone was met and that the Plan still provided for attainment. California has already prepared and submitted a revision to the SJV PM_{2.5} SIP that shows that the SIP continues to provide for RFP in 2012 and for attainment by April 5, 2015. This revision is the 2011

Progress Report, which is one of the submittals that EPA is proposing action on in this notice.

The 2008 PM_{2.5} Plan includes suggestions for several potentially approvable contingency measures as well as several measures that do not currently meet the CAA's minimum requirements. The Plan does not, however, provide sufficient information for us to determine if the emissions reductions from some of the potentially approvable measures are SIP creditable (e.g., those from incentive grant programs) and does not quantify the expected emissions reductions.

The 2011 Progress Report does show that there are surplus reductions in the RFP demonstration for 2012. Appendix C, Table C–1. As shown on Table 10, these reductions, however, do not

provide emissions reductions equivalent to one year's worth of RFP when considered on a per-pollutant basis.³⁵

The continuing implementation of the State's mobile source program in combination with the District's contingency measure in Rule 4901, if triggered, will reduce emissions substantially in 2015 (the year after the attainment year of 2014). However, as shown on Table 10, these reductions do not provide emissions reductions equivalent to one year's worth of RFP when considered on a per-pollutant basis.

Based on this evaluation, EPA proposes to disapprove the RFP and attainment contingency measures in the SJV 2008 PM_{2.5} SIP pursuant to CAA section 172(c)(9) and 40 CFR 51.1012.

TABLE 10—SUMMARY OF REDUCTIONS FROM CONTINGENCY MEASURES IN THE SJV 2008 PM_{2.5} PLAN
[Tons per average annual day]

	Direct PM _{2.5}	NO _x	SO _x
Excess reductions in the RFP demonstration that are available to meet the 2012 RFP contingency requirements (excess reduction in the 2012 RFP demonstration)	0	18	5
Reductions from contingency provision in Rule 9401 and new 2015 reductions available to meet the attainment contingency requirement	1.6	21	3
Reductions equivalent to 1-year's worth of RFP	2.5	31.6	0.2

F. Motor Vehicle Emissions Budgets for Transportation Conformity

1. Requirements for Motor Vehicle Emissions Budgets

CAA section 176(c) requires Federal actions in nonattainment and maintenance areas to conform to the goals of SIPs. This means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, Metropolitan Planning Organizations (MPOs) in nonattainment and maintenance areas coordinate with State and local air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans (RTPs) and transportation improvement programs

(TIPs) conform to the applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEB or budgets) contained in the SIP. An attainment or RFP SIP should include MVEB for the attainment year and each required RFP year, as applicable.

An MPO must use budgets in a submitted but not yet approved SIP, after EPA has determined that the budgets are adequate. Budgets in submitted SIPs may not be used before they are found adequate or are approved. In order for us to find a budget adequate, the submittal must meet the conformity adequacy requirements of 40 CFR 93.118(e)(4) and (5). Additionally, motor vehicle emissions budgets cannot be approved until EPA completes a detailed review of the entire SIP and determines that the SIP and the budgets will achieve their intended purpose (i.e., RFP, attainment or maintenance). The budget must also reflect all of the motor vehicle control

measures contained in the attainment and RFP demonstrations. See 40 CFR 93.118(e)(4)(v).

PM_{2.5} attainment and RFP plans should identify budgets for direct PM_{2.5} and PM_{2.5} attainment plan precursors. Direct PM_{2.5} SIP MVEB should include PM_{2.5} motor vehicle emissions from tailpipes, brake wear, and tire wear. States must also consider whether re-entrained paved and unpaved road dust or highway and transit construction dust are significant contributors and should be included in the direct PM_{2.5} budget. See 40 CFR 93.102(b) and § 93.122(f) and the conformity rule preamble at 69 FR 40004, 40031–40036 (July 1, 2004). The applicability of emission trading between conformity budgets for conformity purposes is described in 40 CFR 93.124(c).

2. Motor Vehicle Emissions Budgets in the SJV 2008 PM_{2.5} Plan

The 2008 PM_{2.5} Plan included MVEB for direct PM_{2.5} and NO_x for the attainment year of 2014 and the RFP years of 2009 and 2012. See 2008 PM_{2.5}

³⁵ In the 2011 Progress Report, the State asserts that these reductions are equal to at least one-year's worth of RFP when considered on a PM_{2.5} equivalency basis; that is, an air quality basis. To make this showing, the State relies in part on an interpollutant trading ratio of 1 ton of SO_x

reductions to 1 ton of PM_{2.5} reductions. As discussed in section V.D.2. of this notice and V.B.4. of the TSD, EPA has found that the technical demonstration submitted in support of this ratio is not adequate and is not allowing its use as part of the 2008 PM_{2.5} Plan. EPA may consider additional

technical information submitted by the State to support an appropriate trading ratio and will provide an opportunity for public comment on such new information.

Plan, Section 7.2.2 and Appendix C. The direct PM_{2.5} budgets include tailpipe, brake wear, and tire wear emissions but do not include paved road, unpaved road, and road and transit construction dust because these are not considered to be significant contributors to PM_{2.5} levels in the Valley. No budgets for SO₂ are included because on-road emissions of SO₂ are also considered insignificant. No budgets for ammonia or VOC are included because these pollutants are not considered attainment plan precursors for the 1997 PM_{2.5} standards in the San Joaquin Valley. *Id.*

In April 2010, based on our initial preliminary review of the Plan, EPA found the RFP budgets in the 2008 PM_{2.5} Plan as submitted in 2008 adequate and the attainment budgets inadequate for transportation conformity purposes.³⁶ We published a notice of our findings at 75 FR 26749 (May 12, 2010).

3. Updated Motor Vehicle Emissions Budgets in the 2011 Progress Report and Additional Revisions

CARB submitted updated MVEB for the San Joaquin Valley in the 2011 Progress Report, Appendices A and D. The updated MVEB were for direct

PM_{2.5} and NO_x for the RFP year of 2012 and the attainment year of 2014. No updated budgets were included for the RFP year of 2009 because there are no applicable conformity analysis years prior to 2012.

The submittal also includes a proposed trading mechanism for transportation conformity analyses that would allow future decreases in NO_x emissions from on-road mobile sources to offset any on-road increases in PM_{2.5}, using a NO_x:PM_{2.5} ratio of 9:1. Transportation conformity trading mechanisms are allowed under 40 CFR 93.124. The basis for the trading mechanism is the SIP attainment modeling which establishes the relative contribution of each PM_{2.5} precursor pollutant.

As proposed in the 2011 Progress Report, this trading mechanism would only be used, if needed, for conformity analyses for years after 2014. To ensure that the trading mechanism does not impact the ability of the SJV to meet the NO_x budget, the NO_x emission reductions available to supplement the PM_{2.5} budget would only be those remaining after the 2014 NO_x budget has been met. Clear documentation of

the calculations used in the trade would be included in the conformity analysis. See 2011 Progress Report, Appendix D, footnote to Table D–2.

On June 20, 2011, CARB posted on its website technical revisions to the updated MVEBs in the 2011 Progress Report that were referenced in a June 3rd letter to EPA.³⁷ See CARB, “Proposed 8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the PM_{2.5} State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins,” Appendix C, June 20, 2011, posted at <http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm>. These revised updated MVEBs are shown in table 11 below. The technical revisions correct data entry errors in the budget calculations and remove the emission reductions attributed to SJVAPCD’s Rule 9510, “Indirect Source Review” (ISR). EPA recently approved Rule 9510 into the California SIP but disallowed the use of emissions reductions from the rule for any SIP purpose including transportation conformity. See 75 FR 28509 (May 21, 2010) and 76 FR 26609 (May 9, 2011).

TABLE 11—REVISED UPDATED PM_{2.5} MVEB FOR THE SAN JOAQUIN VALLEY

[Tons per average annual day]

County	2012		2014	
	PM _{2.5}	NO _x	PM _{2.5}	NO _x
Fresno	1.5	35.7	1.1	31.4
Kern (SJV)	1.9	48.9	1.2	43.8
Kings	0.4	10.5	0.3	9.3
Madera	0.4	9.2	0.3	8.1
Merced	0.8	19.7	0.6	17.4
San Joaquin	1.1	24.5	0.9	21.6
Stanislaus	0.7	16.7	0.6	14.6
Tulare	0.7	15.7	0.5	13.8

4. Proposed Action on the Motor Vehicle Emissions Budgets

EPA has evaluated the revised updated budgets against our adequacy criteria in 40 CFR 93.318(e)(4) as part of our review of the budgets’ approvability. The results of this review are documented in Section II.J. of the TSD. We are also posting a notice of availability on our transportation adequacy Web site at <http://www.epa.gov/otaq/stateresources/transconf/currsips.htm>. EPA is not required under its Transportation Conformity rules to find budgets adequate prior to proposing approval of

them. We will ultimately complete the adequacy review of these budgets. That could occur when we take a final action on this SIP or it could happen at an earlier date.

As discussed in sections V.C. and V.D., we have completed our detailed review of the 2008 SJV PM_{2.5} SIP and supplemental submittals including the 2011 Progress Report. Based on this thorough review of these submittals, we are proposing to approve the attainment and RFP demonstrations in the 2008 SJV PM_{2.5} SIP. As discussed above, CARB has recently posted revisions to the updated budgets that were submitted in

the 2011 Progress Report and intends to present these budgets for adoption as a SIP revision at its July 21, 2011 Board meeting. After reviewing these revised updated MVEBs, we are proposing to find them to be consistent with the approvable attainment and RFP demonstrations and to find that they meet all other applicable statutory and regulatory requirements including the adequacy criteria in § 93.118(e)(4) and (5). Therefore, EPA proposes to approve the revised updated MVEB based on the assumption that we will receive the revised budgets as a complete SIP revision from the State prior to our final

³⁶ See letter, Deborah Jordan, Air Division Director, EPA Region 9, to James M. Goldstene, Executive Officer, CARB, “RE: Adequacy Status of

San Joaquin Valley PM_{2.5} Reasonable Further Progress and Attainment Plan Motor Vehicle Emissions Budgets,” dated April 23, 2010.

³⁷ See letter, James M. Goldstene, Executive Officer, CARB, to Deborah Jordan, Air Division Director, EPA Region 9, June 3, 2011.

action on the SJV PM_{2.5} SIP. If CARB is unable to adopt and submit the revised updated budgets, then EPA intends to find inadequate and disapprove the updated MVEB contained in the 2011 Progress Report.³⁸ If we disapprove the MVEB, a conformity freeze would take effect upon the effective date of the disapproval (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent conforming RTP and TIP can proceed. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform. See 40 CFR 93.120.

5. Proposed Action on the Trading Mechanism

As noted above, CARB included a trading mechanism to be used in transportation conformity analyses that use the proposed budgets as allowed for under 40 CFR 93.124. This trading mechanism would allow future decreases in NO_x emissions from on-road mobile sources to offset any on-road increases in PM_{2.5}, using a NO_x:PM_{2.5} ratio of 9:1. As proposed by CARB, the trading mechanism would only be used, if needed, for conformity analyses for years after 2014. To ensure that the trading mechanism does not affect the ability of the SJV to meet the NO_x budget, the NO_x emissions reductions available to supplement the PM_{2.5} budget would only be those remaining after the 2014 NO_x budget has been met. The trading mechanism will be implemented with the following criteria. The trading applies only to:

- Analysis years after the 2014 attainment year.
- On-road mobile emission sources.
- Trades using vehicle NO_x emission reductions in excess of those needed to meet the NO_x budget.
- Trades in one direction from NO_x to direct PM_{2.5}.
- A trading ratio of 9 tpd NO_x to 1 tpd PM_{2.5}.

Clear documentation of the calculations used in the trade would be included in the conformity analysis. See 2011 Progress Report, Appendix D, footnote to Table D-2.

EPA has reviewed the 9:1 NO_x:PM_{2.5} ratio and finds it is an appropriate ratio for trading between NO_x and direct PM_{2.5} for transportation conformity purposes in the San Joaquin Valley for the 1997 PM_{2.5} NAAQS. The method discussed in the documentation appears

to be adequate for purposes of assessing the effect of area-wide emissions changes, such as are used in conformity budgets. See section V.D.2. above and II.B.4. of the TSD.

EPA believes that the 2008 PM_{2.5} Plan as revised by the 2011 Progress Report includes an approvable trading mechanism for determining transportation conformity after 2014. EPA is proposing to approve the trading mechanism and all of the criteria included in the footnote to Table D-2 as enforceable components of the transportation conformity program for the SJV for the 1997 PM_{2.5} NAAQS. EPA is also proposing to approve the use of this ratio in transportation conformity determinations for the 2006 24-hour PM_{2.5} NAAQS but only until EPA finds adequate or approves budgets developed specifically for the 2006 24-hour PM_{2.5} standard. Until that time, conformity will be determined using the budgets for the 1997 annual PM_{2.5} NAAQS.

VI. EPA's Proposed Actions and Potential Consequences

A. EPA's Proposed Approvals and Disapprovals

For the reasons discussed above, EPA proposes to approve, with the exception of the contingency measures and one commitment by the SJVUAPCD, California's SIP for attaining the 1997 PM_{2.5} NAAQS in the San Joaquin Valley and to grant the State's request for an extension of the attainment date. This SIP is composed of the SJVUAPCD's 2008 PM_{2.5} Plan as revised in 2010 and 2011 and the SJV-specific portions of CARB's 2007 State Strategy as revised in 2009 and 2011 addressing CAA and EPA regulations for attainment of the 1997 PM_{2.5} NAAQS in the SJV.

Specifically, EPA proposes to approve under CAA section 110(k)(3) the following elements of the SJV PM_{2.5} attainment SIP:

1. The 2005 base year emissions inventories as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008;
2. The reasonably available control measures/reasonably available control technology demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1010;
3. The reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2) and 40 CFR 51.1009;
4. The attainment demonstration as meeting the requirements of CAA sections 172(c)(1) and (6) and 40 CFR 51.1007;
5. The air quality modeling as meeting the requirements of the CAA and EPA guidance;

6. The revised updated 2012 RFP year and 2014 attainment year motor vehicle emissions budgets as posted by CARB on June 21, 2011 contingent upon our receipt of a SIP revision because they are derived from approvable RFP and attainment demonstrations and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A and CARB's trading mechanism to be used in transportation conformity analyses as allowed under 40 CFR 93.124;

7. SJVUAPCD's commitments to the adoption and implementation schedule for specific control measures listed in Table 6-2 (amended June 15, 2010) of the 2008 PM_{2.5} Plan to the extent that these commitments have not yet been fulfilled, and to achieve specific aggregate emissions reductions of direct PM_{2.5}, NO_x and SO_x by year, as listed in Table 6-3 of the PM_{2.5} Plan, except for the commitment to adopt revisions to Rule 4702; and

8. CARB's commitments to propose certain defined measures, as listed in Table B-1 on page 1 of Appendix B of the 2011 Progress Report and to achieve aggregate emissions reductions by 2014 sufficient to provide for attainment of the 1997 PM_{2.5} NAAQS as described in CARB Resolution 07-28, Attachment B.

EPA also proposes to concur with the State's determination under 40 CFR 51.1002(c) that SO_x and NO_x are and VOC and ammonia are not attainment plan precursors for the attainment of the 1997 PM_{2.5} NAAQS in the SJV.

EPA proposes to grant, pursuant to CAA section 172(a)(2)(A) and 40 CFR 51.1004(a), California's request to extend the attainment date for the San Joaquin Valley PM_{2.5} nonattainment area to April 5, 2015.

EPA proposes to disapprove under CAA section 110(k)(3) the contingency measures provisions of the SJV PM_{2.5} attainment SIP as failing to meet the requirements of CAA section 172(c)(9) and 40 CFR 51.1012.

Finally, EPA proposes to disapprove the commitment by the SJVUAPCD to adopt revisions to Rule 4702 "Reciprocating Internal Combustion Engines" by December 2010 because that date has passed and the District has not adopted revisions to the rule. We will not finalize this proposed disapproval, however, if the District adopts revisions to the rule that fulfill the commitment by the time of EPA's final action on the Plan.

B. CAA Consequences of a Final Disapproval

EPA is committed to working with the District, CARB and the SJV MPOs to resolve the remaining issues that make the current PM_{2.5} attainment SIP for the

³⁸ EPA cannot approve or find adequate the updated budgets included in the 2011 Progress Report because they include uncreditable reductions from the District's ISR rule and because of the technical error in the budget calculations.

SVJ not fully approvable under the CAA and the PM_{2.5} implementation rule. However, should we finalize the proposed disapproval of the contingency measure provisions in the SVJ 2008 PM_{2.5} Plan or finalize a disapproval of the MVEB, the offset sanction in CAA section 179(b)(2) would apply in the SVJ PM_{2.5} nonattainment area 18 months after the effective date of a final disapproval. The highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if California submits and we approve prior to the implementation of the sanctions, SIP revisions that correct the deficiencies identified in our proposed action. In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a Federal implementation plan addressing the deficient elements in the PM_{2.5} SIP for the SVJ nonattainment area, two years after the effective date of any disapproval should we not approve a SIP revision correcting the deficiencies within the two years.

Neither sanctions nor a FIP would be imposed should EPA disapprove the District's discretionary commitment to revise Rule 4702. Sanctions would not be imposed because the District's decision to include the commitment in its Plan was discretionary (*i.e.*, not required to be included in the SIP), and EPA would not promulgate a FIP in this instance because the disapproval does not reveal a deficiency in the PM_{2.5} SIP that such a FIP must correct. This is because the failure of the District to adopt revisions to Rule 4702 would not adversely affect the 2008 PM_{2.5} SIP's compliance with the CAA's mandated requirements for RACM/RACT, RFP, and/or attainment demonstrations nor would it prevent EPA from granting an extension of the attainment date under CAA section 172(b).

Because we are proposing to approve the RFP and attainment demonstrations and the motor vehicle emission budgets, we are proposing to issue a protective finding under 40 CFR 93.120(a)(3) to the disapproval of the contingency measures. Without a protective finding, final disapproval would result in a conformity freeze, under which only projects in the first four years of the most recent conforming Regional Transportation Plan and Transportation Improvement Programs can proceed. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform. See 40 CFR 93.120(a)(2). Under a protective finding, however, final disapproval of the contingency measures would not result in a

transportation conformity freeze in the San Joaquin PM_{2.5} nonattainment area.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submittals, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to partially approve and partially disapprove State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP partial approval and partial disapproval under CAA section 110 and subchapter I, part D will not in-and-of itself create any new information collection burdens but simply approves certain State requirements for inclusion into the SIP and disapproves others. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed partial approval and partial disapproval of the SIP under CAA section 110 and subchapter I, part D will not in-and-of itself create any new requirements but simply approves certain State requirements for inclusion into the SIP and disapproves others. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (e.g., higher offset requirements) may or will flow from a final disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector." EPA has determined that the proposed partial approval and partial disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to partially approve and partially disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct

effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely partially approves and partially disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to partially approve and partially disapprove would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks

subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed partial approval and partial disapproval of the SIP under CAA section 110 and subchapter I, part D will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal

executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submittals, EPA’s role is to approve or disapprove State choices, based on the criteria of the CAA. Accordingly, this action merely proposes to approve certain State requirements for inclusion into the SIP under CAA section 110 and subchapter I, part D and to disapprove others will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 29, 2011.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

[FR Doc. 2011–17196 Filed 7–12–11; 8:45 am]

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Part III

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 713 and 716

Impact of Reducing the Mixture Concentration Threshold for Commercial
Schedule 2A Chemical Activities Under the Chemical Weapons Convention
Regulations; Proposed Rule

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Parts 713 and 716**

RIN 0694-XA27

[Docket No. 100817370-0464-01]

Impact of Reducing the Mixture Concentration Threshold for Commercial Schedule 2A Chemical Activities Under the Chemical Weapons Convention Regulations**AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact of amending the Chemical Weapons Convention Regulations (CWC) to reduce the concentration level below which the CWC exempt certain mixtures containing a Schedule 2A chemical from the declaration requirements that apply to Schedule 2A chemical production, processing, and consumption under the Chemical Weapons Convention (CWC). To make these declaration requirements consistent with the international agreement adopted by the Organization for the Prohibition of Chemical Weapons (OPCW), BIS is considering amending the CWC to replace the current low concentration exemption (a concentration of “less than 30%” by volume or weight) with a two-tiered low concentration exemption that is based, in part, on whether the total amount of a Schedule 2A chemical produced, processed, or consumed at one or more plants on a plant site during a calendar year is less than the applicable verification threshold in the CWC. Under this two-tiered approach, the declaration and reporting requirements in the CWC would not apply to a chemical mixture containing a Schedule 2A chemical if: The concentration of the Schedule 2A chemical in the mixture is “1% or less,” or the concentration of the Schedule 2A chemical in the mixture is “more than 1%, but less than or equal to 10%,” and the annual amount of the Schedule 2A chemical produced, processed, or consumed is less than the relevant verification threshold. Legislative amendment of the Chemical Weapons Convention Implementation Act (CWCIA) is required in order to implement this proposed amendment to the CWC.

In addition, at U.S. national discretion, BIS is considering amending the CWC to require declarations/

reports for exports and imports of any mixtures that contain “more than 10%” of a Schedule 2A chemical by volume or weight (whichever method yields the lesser percentage), if the total quantity of the Schedule 2A chemical exported or imported during a calendar year exceeds the applicable CWC declaration threshold.

DATES: Comments are due August 12, 2011.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail:* wfisher@bis.doc.gov.

Include the phrase “Schedule 2A Notice of Inquiry” in the subject line of the message.

- *Fax:* (202) 482-3355 (Attn: Willard Fisher). Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

- *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

Send comments regarding the collection of information identified in this notice of inquiry, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K_Seehra@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the notice of inquiry—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: For questions on the Chemical Weapons Convention requirements for Schedule 2A and 2A* chemicals, contact Douglas Brown, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482-2163. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482-2440.

SUPPLEMENTARY INFORMATION:**Background**

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction,

commonly called the Chemical Weapons Convention (CWC or the Convention), is an international arms control and nonproliferation treaty that established the Organization for the Prohibition of Chemical Weapons (OPCW) to implement the verification provisions of the treaty. A major objective of the CWC is to verify that lawful activities of chemical producers and users are not converted to unlawful activities related to chemical weapons. Consistent with this objective, the CWC imposes a number of obligations on countries that have ratified the CWC (States Parties). In this regard, the CWC establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process, or consume certain “scheduled” chemicals (*i.e.*, Schedule 1, Schedule 2, and Schedule 3 chemicals) and unscheduled discrete organic chemicals (UDOCs), many of which have significant commercial applications. The CWC also requires States Parties to report exports and imports and to impose export and import restrictions on certain chemicals. These requirements apply to all entities under the jurisdiction and control of States Parties, including commercial entities and individuals.

To ensure the implementation of this verification scheme on a national level, the CWC requires each State Party to enact legislation that prohibits the production, storage and use of chemical weapons, and to establish a National Authority to serve as a liaison with the OPCW and other States Parties. The CWC also requires that each State Party implement a comprehensive data declaration¹ and inspection regime² to

¹ In the United States, facilities that have data declaration obligations under the Chemical Weapons Convention Regulations (CWC) (15 CFR Parts 710-722), because they engage in certain activities involving scheduled chemicals or unscheduled discrete organic chemicals, must submit the appropriate declaration forms to the Bureau of Industry and Security (BIS). Such facilities are treated as “declared” facilities under the CWC and their facility-specific information is transmitted by the U.S. to the OPCW. Entities that are “undeclared” facilities or trading companies, whose obligations under the CWC are limited to certain export and/or import activities, must submit the appropriate report forms to BIS—their facility-specific information is not transmitted by the U.S. to the OPCW (*i.e.*, the information is aggregated prior to transmission to the OPCW). “Declared” facilities also must submit export/import information to BIS if such activities are subject to the declaration/reporting requirements of the CWC.

² Each State Party to the CWC, including the United States, has agreed to allow certain inspections of “declared” facilities by inspection teams employed by the OPCW to ensure that the activities of such facilities comply with CWC requirements. BIS is responsible for leading, hosting and escorting inspections of all facilities subject to

provide transparency and to verify that both the public and private sectors of States Parties are not engaged in activities prohibited under the CWC.

This notice of inquiry addresses the CWC requirements that apply to certain mixtures that contain a Schedule 2 chemical. Part VII, paragraph 5 of the Verification Annex to the CWC ("Schedule 2 Regime") provides that declarations "are generally not required for mixtures containing a low concentration of a Schedule 2 chemical" and that the Conference of the States Parties to the Convention will consider and approve guidelines to establish the appropriate low concentration level. Schedule 2 chemicals, as set forth in the Convention's "Annex on Chemicals," include those chemicals and precursors identified in the Convention as posing a "significant" risk to the object and purpose of the Convention.³

Consistent with the requirements of the CWC, the Chemical Weapons Implementation Act of 1998 (CWCIA) (22 U.S.C. 6701 *et seq.*), which was enacted on October 21, 1998, authorizes the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications and other reports and to provide access for on-site inspections conducted by inspectors sent by the OPCW. Section 402(a)(1) of the CWCIA established 10% as the concentration limit of any Schedule 2 chemical (*i.e.* Schedule 2A, 2A*, or 2B chemicals)⁴ in a mixture, below which the CWC's declaration, reporting and inspection requirements do not apply.

The Bureau of Industry and Security (BIS) administers the Chemical Weapons Convention Regulations (CWCRC) (15 CFR Parts 710–722), which implement provisions of the CWCIA. Currently, the CWCRC do not require that the quantity of a Schedule 2A chemical contained in a mixture be counted for declaration or reporting purposes if the concentration of the Schedule 2A

chemical in the mixture is "less than 30%" by volume or weight, whichever yields the lesser percentage. This low concentration exemption was implemented by BIS in the CWCRC in 1999, prior to the 2009 approval by the Conference of the States Parties to the Convention of guidelines, as described below, that established the low concentration exemption for mixtures containing Schedule 2 chemicals, in accordance with the Schedule 2 Regime.

The CWCRC currently apply a 30% low concentration threshold to the application of the Schedule 2A chemical declaration, reporting, and inspection requirements, rather than the 10% low concentration threshold established by the CWCIA, in order to ensure that the chemical mixture requirements in the CWCRC are compatible with the export requirements in the Export Administration Regulations (EAR) (15 CFR parts 730–774) that apply to certain scheduled chemical precursors (including mixtures that contain these precursors). Although the Schedule 2A chemical low concentration threshold in the CWCRC is higher than the low concentration threshold established by CWCIA, it is consistent with the CWCIA because it still exempts mixtures that contain Schedule 2A chemicals at a concentration level below 10% from the declaration, reporting, and inspection requirements of the CWC. However, legislative amendment of the CWCIA will be required prior to any change in the CWCRC low concentration threshold that would reduce this threshold below the 10% low concentration threshold established by the CWCIA.

The declaration, reporting, and inspection/verification requirements in the CWC that affect commercial activities involving Schedule 2 chemicals are described in parts 713 and 716 of the CWCRC. These CWCRC provisions:

(1) Require annual declarations by certain facilities (*i.e.*, "declared" Schedule 2 "plant sites") that were engaged in the production, processing, or consumption of a Schedule 2A chemical during any of the three previous calendar years, or which anticipate engaging in such activities in the next calendar year, in excess of the following quantities (declaration thresholds):

(a) 100 kilograms of chemical Amiton: 0,0 Diethyl S-[2-(diethylamino) ethyl] phosphorothiolate and corresponding alkylated or protonated salts;

(b) 100 kilograms of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene; or

(c) 1 kilogram of chemical BZ: 3-Quinuclidinyl benzilate (15 CFR § 713.2(a)(1));

(2) Require that the calculation of the quantity of any Schedule 2 chemical that is produced, processed or consumed must include the quantities produced, processed or consumed in mixtures, if the concentration of the Schedule 2 chemical in the mixture is equal to or greater than 30% by volume or by weight, whichever yields the lesser percentage (15 CFR 713.2(a)(3));

(3) Define Schedule 2 chemical production to include all steps in the production of a Schedule 2 chemical in any units within the same plant through chemical reaction, including any associated processes (*e.g.*, purification, separation, extraction, distillation, or refining) in which the chemical is not converted into another chemical (15 CFR 713.2(a)(2));

(4) Provide that all "declared Schedule 2" plant sites are subject to initial and routine inspection by the OPCW (15 CFR 713.2(e));

(5) Require plant sites, trading companies, and any other person subject to the CWCRC to submit annual declarations/reports of all exports and imports of any Schedule 2 chemical to, or from, other destinations if the total quantity exported or imported exceeds the applicable declaration threshold (15 CFR 713.3); and

(6) Define inspection/verification thresholds for the production, processing, or consumption, during the calendar year of a Schedule 2A chemical as being in excess of the following quantities:

(a) 1 metric ton (MT) of chemical Amiton: 0,0 Diethyl S [2 (diethylamino) ethyl] phosphorothiolate and corresponding alkylated or protonated salts;

(b) 1 MT of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene; or

(c) 10 kg of chemical BZ: 3-Quinuclidinyl benzilate (15 CFR 716.1(b)(2)).

During the OPCW's 14th Conference of the States Parties, which was held in The Hague, the Netherlands, on December 2, 2009, the States Parties to the CWC agreed that the CWC's declaration and reporting requirements would not apply to a chemical mixture containing a Schedule 2A chemical if:

(1) The concentration of the Schedule 2A chemical in the mixture is "1% or less" or (2) the concentration of the Schedule 2A chemical in the mixture is "more than 1%, but less than or equal to 10%," and the annual amount of the Schedule 2A chemical produced, processed, or consumed is less than the

the provisions of the CWCRC. (See 15 CFR part 716 for the types of activities that are subject to inspection and specific inspection thresholds.)

³ The CWC "Annex on Chemicals" groups scheduled chemicals (*i.e.*, Schedules 1, 2, and 3) according to the level of risk to the "object and purpose" of the CWC, with Schedule 1 chemicals representing the highest level of risk and Schedule 3 chemicals, the lowest.

⁴ Schedule 2 in the CWC "Annex on Chemicals" contains the subcategories 2A and 2B. Schedule 2A chemicals consist of those Schedule 2 chemicals that are identified as "toxic" chemicals. Schedule 2B chemicals consist of those Schedule 2 chemicals that are identified as "precursor" chemicals. One chemical within the subcategory Schedule 2A (*i.e.*, "BZ: 3-Quinuclidinyl benzilate") is designated as a Schedule 2A* chemical, because it has a lower declaration threshold and a lower inspection/verification threshold than the other Schedule 2A chemicals.

relevant verification threshold. As previously indicated, a low concentration exemption of “less than 30%” currently applies to Schedule 2 chemicals in the United States under the CWC. The OPCW agreement is documented in OPCW Decision C-14/DEC.4 and can be obtained from the OPCW Web site (<http://www.opcw.org>). Amendment to the CWCIA and CWC is necessary to implement these new OPCW guidelines.

In addition, during the OPCW’s 5th Conference of the States Parties, which was held in The Hague, the Netherlands, on May 19, 2000, the States Parties to the CWC agreed that the CWC’s declaration requirements would not apply to a chemical mixture containing a Schedule 2B chemical or a Schedule 3 chemical if the concentration of the Schedule 2B chemical or the Schedule 3 chemical in the mixture is “30% or less.” The impact of this CWC agreement on the declaration requirements for Schedule 2B chemicals is expected to be modest because the amount of a Schedule 2B chemical in a mixture is currently exempted from the declaration requirements in the CWC if the concentration of the Schedule 2B chemical in the mixture is “less than 30%.” BIS will address the impact of these new CWC guidelines on Schedule 3 chemical declaration requirements in a separate rulemaking. The CWC agreement is documented in OPCW Decision C-V/DEC.19 and can be obtained from the OPCW Web site (<http://www.opcw.org>).

Discussion and Request for Comments

Section 713.2(a) of the CWC requires submission of a declaration from a plant site if one or more plants at that plant site produced, processed or consumed a Schedule 2A chemical during any of the three previous calendar years, or anticipate doing so in the next calendar year, in excess of the quantity specified (the declaration threshold) for a Schedule 2A chemical. A plant site is subject to inspection/verification if it produced, processed or consumed a Schedule 2A chemical during any of the three previous calendar years, or anticipates doing so in the next calendar year, in excess of ten times the applicable declaration threshold for a Schedule 2A chemical (the verification threshold). Currently, the CWC requires that the quantity of a Schedule 2A chemical produced, processed or consumed in mixtures be included in the calculation of the annual quantity of Schedule 2A chemicals produced, processed or consumed only if the mixture contains 30% or more by

weight or volume (whichever yields the lesser percentage) of the Schedule 2A chemical.

To make these CWC requirements consistent with OPCW Decision C-14/DEC.4, BIS is considering amending the CWC to establish a two-tiered low concentration exemption for certain mixtures containing Schedule 2A chemicals. The two tiers would be based, in part, on whether the total Schedule 2A chemical production, processing, or consumption at one or more plants on a plant site during a calendar year is less than the applicable verification threshold in the CWC.

Under the first tier, a mixture that contains a Schedule 2A chemical at a concentration of “1% or less” by volume or weight (whichever method yields the lesser percentage) would be exempt from the CWC declaration requirements for Schedule 2A chemicals and, as such, none of the Schedule 2A chemical in the mixture would have to be counted for declaration purposes. Furthermore, the amount of the Schedule 2A chemical in such a mixture would be exempt from the CWC Schedule 2A declaration requirements regardless of the total amount of the Schedule 2A chemical produced, processed, or consumed at one or more plants on a plant site during a calendar year. Under the second tier, a mixture that contains a Schedule 2A chemical at a concentration of “more than 1%, but less than or equal to 10%,” by volume or weight (whichever method yields the lesser percentage) would be exempt from the CWC declaration requirements for Schedule 2A chemicals, provided that the total amount of a Schedule 2A chemical produced, processed, or consumed at one or more plants on a plant site during a calendar year is less than the applicable verification threshold.

Also, BIS is considering amending the threshold level at which the CWC would require declarations/reports on exports and imports of Schedule 2A chemicals contained in mixtures. Under the changes being considered by BIS, the CWC would require declarations/reports on exports and imports of a Schedule 2A chemical contained in a mixture at a concentration of “more than 10%” by volume or weight (whichever yields the lesser percentage), if the total quantity of the Schedule 2A chemical exported or imported during a calendar year exceeds the applicable declaration threshold. Currently, the CWC requires that exports and imports of a Schedule 2 chemical in a mixture

be counted for declaration/reporting⁵ purposes if the concentration of the Schedule 2 chemical in the mixture is “30% or more” by volume or weight (whichever yields the lesser percentage).

The impact of implementing OPCW Decision C-14/DEC.4 in the CWC is illustrated, below, by using the production of the Schedule 2A chemical Perfluoroisobutene (PFIB), also known as 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene, as an example. The CWC implements the declaration requirements in the CWC that apply if at least one plant at a plant site produces, processes, or consumes more than 100 kg of PFIB during a calendar year (i.e., the declaration threshold for PFIB). Additionally, the CWC imposes the CWC inspection/verification requirements for the production, processing, or consumption of more than 1 MT of PFIB (i.e., the verification threshold for PFIB). Using the declaration and verification thresholds for PFIB, a number of possible scenarios are described below to clarify how these proposed amendments would operate in practice.

(1) If the calendar year production of PFIB at one or more plants on a plant site totaled 90 kg of PFIB as a mixture containing PFIB at a concentration of 11%, then the Schedule 2A chemical declaration requirements in the CWC would not apply, because the total amount of PFIB produced by one or more plants on the plant site did not exceed the declaration threshold of 100 kg. In addition, if the plant site (or a person or trading company) exported or imported a total of 90 kg of PFIB as a mixture containing PFIB at a concentration of 11%, then the CWC declaration/reporting requirements for exports and imports of Schedule 2A chemicals would not apply, because the total amount of PFIB exported or imported did not exceed the applicable declaration/reporting threshold for exports or imports (100 kg). In both scenarios, the concentration of PFIB in

⁵ “Declared” facilities that engaged in certain export and/or import activities involving Schedule 2 chemicals must submit such export/import information as part of their declarations, if the exported/imported chemicals are the same as those chemicals that were declared as produced, processed, and/or consumed by such facilities. “Declared” facilities that engaged in export and/or import activities involving Schedule 2 chemicals that were different from those produced, processed, and/or consumed by such facilities above the applicable declaration threshold must report such activities to BIS either with their respective declarations or in a separate report. “Undeclared” facilities or trading companies that engaged in export and/or import activities involving Schedule 2 chemicals also must report such information to BIS. (See Section 713.3(a) of the CWC and the Notes thereto.)

the mixture is irrelevant, because the total quantity of PFIB did not exceed the applicable declaration and/or reporting threshold.

(2) If the calendar year production of PFIB at one or more plants on a plant site totaled 1.1 MT of PFIB as a mixture containing PFIB at a concentration of 1%, then the Schedule 2A chemical declaration requirements in the CWCR would not apply to the quantity of PFIB in the mixture. This would be the outcome under the new low concentration exemption being considered by BIS, because the amount of PFIB in mixtures containing 1% or less of PFIB does not have to be counted, for purposes of the Schedule 2A declaration requirements, even if the total amount of PFIB produced, processed, or consumed at one or more plants on a plant site exceeds the applicable verification threshold (1 MT). If such a mixture were exported or imported, then the CWCR declaration/reporting requirements for exports or imports of Schedule 2A chemicals would not apply to the quantity of PFIB in the mixture, because the concentration of PFIB in the mixture (1% PFIB) does not exceed the 10% low concentration exemption for mixtures containing Schedule 2A chemicals.

(3) If the calendar year production of PFIB at one or more plants on a plant site totaled 900 kg of PFIB as a mixture containing PFIB at a concentration of 10%, then the Schedule 2A declaration requirements in the CWCR would not apply to the quantity of PFIB in the mixture, because the total amount of PFIB produced at one or more plants on the plant site did not exceed the 1 MT verification threshold and, therefore, the 10% low concentration exemption for mixtures containing Schedule 2A chemicals would apply (i.e., the amount of PFIB in mixtures containing PFIB at a concentration of 10% or less does not have to be counted for purposes of the CWCR declaration requirements for the production, processing, or consumption of Schedule 2A chemicals when the total amount of PFIB produced, processed, or consumed at one or more plants on a plant site during a calendar year does not exceed the applicable verification threshold). If a plant site (or a person or trading company) exported or imported the same quantity of PFIB (900 kg) as a mixture containing 10% PFIB, then the CWCR declaration/reporting requirements for exports or imports of Schedule 2A chemicals would not apply to the quantity of PFIB in the mixture. This is because even though the total amount of PFIB exported or imported (900 kg) exceeds the applicable CWCR declaration

threshold (100 kg), a mixture that contains 10% PFIB would not exceed the 10% low concentration exemption for mixtures containing Schedule 2A chemicals.

(4) If the calendar year production of PFIB at one or more plants on a plant site totaled 1.1 MT of PFIB as a mixture containing a concentration of 10% PFIB, then the Schedule 2A declaration requirements in the CWCR would apply to the quantity of PFIB in the mixture, because 1.1 MT of PFIB exceeds the 1 MT verification threshold, which means that the applicable low concentration exemption for mixtures containing Schedule 2A chemicals would be 1% or less, instead of 10% or less (the latter exemption level applies when the total amount of PFIB produced, processed, or consumed at one or more plants at a plant site does not exceed the 1 MT verification threshold). Under these circumstances, the amount of PFIB in mixtures of PFIB with a concentration of more than 1% must be included in the calculation of the amount produced, processed, or consumed, for declaration purposes. If a plant site (or a person or trading company) exported or imported the same quantity of PFIB (1.1 MT) as a mixture containing PFIB at a concentration of 10%, the CWCR declaration/reporting requirements for exports or imports of Schedule 2A chemicals would not apply to the quantity of PFIB in the mixture, because a mixture containing 10% PFIB does not exceed the 10% low concentration exemption for mixtures containing Schedule 2A chemicals.

(5) If the calendar year production of PFIB at one or more plants on a plant site totaled 900 kg of PFIB as a mixture containing PFIB at a concentration of 11%, then the declaration requirements in the CWCR would apply to the quantity of PFIB in the mixture, because 900 kg of PFIB exceeds the 100 kg declaration threshold and a mixture that contains PFIB at a concentration of 11% exceeds the 10% low concentration exemption, which applies when the total amount of a Schedule 2A chemical produced, processed, or consumed at one or more plants at a plant site does not exceed the verification threshold (1 MT of PFIB). Under these circumstances, the quantity of PFIB in mixtures containing PFIB at a concentration of more than 10% must be included in the calculation of the amount produced, processed, or consumed, for declaration purposes. If a plant site (or a person or trading company) exported or imported the same quantity of PFIB (900 kg) as a mixture containing PFIB at a concentration of 11%, then the CWCR

declaration/reporting requirements for exports or imports of Schedule 2A chemicals would apply to the quantity of PFIB in the mixture because the total amount of PFIB exported or imported (900 kg) exceeds the applicable declaration/reporting requirement threshold in the CWCR (100 kg) and a mixture that contains PFIB at a concentration of 11% exceeds the 10% low concentration exemption for mixtures containing Schedule 2A chemicals.

BIS is seeking public comments on the potential effects of amending the CWCR declaration requirements that apply to the production, processing, and consumption of Schedule 2A chemicals by reducing the concentration level at which certain mixtures containing low concentrations of Schedule 2A chemicals would be exempt from these requirements. Specifically, the current exemption, which applies when the concentration of the Schedule 2A chemical in the mixture is "less than 30%" by volume or weight (whichever method yields the lesser percentage), would be replaced by a two-tiered exemption under which the following mixtures would be exempt: (1) Mixtures containing a Schedule 2A chemical at a concentration of "1% or less" by volume or weight (whichever method yields the lesser percentage) and (2) mixtures containing a Schedule 2A chemical at a concentration of "more than 1%, but less than or equal to 10%" by volume or weight (whichever method yields the lesser percentage), provided that the total amount of the Schedule 2A chemical produced, processed, or consumed at one or more plants on a plant site during a calendar year is less than the applicable verification threshold in the CWCR. The public comments received in response to this notice of inquiry will assist BIS in assessing the impact of this change on U.S. persons involved in the production, processing, or consumption of Schedule 2A chemicals.

Additionally, BIS is seeking public comments on the potential effects of amending the CWCR declaration/reporting requirements that apply to certain exports or imports of Schedule 2A chemicals by reducing the exemption for mixtures containing low concentrations of Schedule 2A chemicals from the current level of "less than 30%" by volume or weight (whichever yields the lesser percentage) to a concentration of "10% or less" by volume or weight (whichever yields the lesser percentage). In particular, BIS seeks comments on the potential impact of these changes on costs, operations, and trade.

Finally, BIS is seeking public comments on the anticipated impact of these changes with respect to an existing collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. The changes that are being considered by BIS would revise an existing collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694-0091 (Chemical Weapons Convention—Declaration and Report Forms), which carries burden hour estimates of 10.6 hours for Schedule 1 Chemicals, 11.9 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3/5.1/5.1 hours for unscheduled discrete organic chemicals (includes Annual Declaration on Past Activities, No Changes Authorization Form, and Change in Inspection Status Form, respectively), and 0.17 hours for Schedule 1 notifications.

Specifically, these changes would affect this approved information

collection with respect to information collection activities (*e.g.*, declarations, reports, recordkeeping) involving CWC Schedule 2A chemicals that are subject to declaration and/or reporting requirements under the CWC. In this regard, BIS is seeking comments that address the anticipated impact of the changes being considered by BIS on the burden hours and costs associated with Schedule 2A chemical activities under this approved information collection.

Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this notice.

Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on August 12, 2011. The Department will consider all comments received before the close of the comment period. Comments received after the end of the

comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration, at (202) 482-2165, for assistance.

Dated: July 1, 2011.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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Part IV

Department of Commerce

Bureau of Industry and Security

15 CFR Part 714

Impact of Reducing the Mixture Concentration Threshold for Commercial
Schedule 3 Chemical Activities Under the Chemical Weapons Convention
Regulations; Proposed Rule

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Part 714**

[Docket No. 100817371-0505-01]

Impact of Reducing the Mixture Concentration Threshold for Commercial Schedule 3 Chemical Activities Under the Chemical Weapons Convention Regulations**AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact of amending the Chemical Weapons Convention Regulations (CWCRCR) to reduce the concentration level at which the CWCRCR exempt certain mixtures containing Schedule 3 chemicals from the declaration requirements that apply to Schedule 3 chemical production and the reporting requirements that apply to exports and imports of Schedule 3 chemicals under the Chemical Weapons Convention (CWC).

BIS is considering amending the CWCRCR declaration requirements that apply to the production of Schedule 3 chemicals to conform with the low concentration exemption adopted by the Organization for the Prohibition of Chemical Weapons (OPCW) in 2003, which applies when the concentration of any single Schedule 3 chemical in a mixture is “30% or less,” by weight or volume (whichever yields the lesser percent). Currently, the CWCRCR do not require the quantity of a Schedule 3 chemical contained in a mixture to be counted for declaration or reporting purposes if the concentration of the Schedule 3 chemical in the mixture is “less than 80%” by volume or weight (whichever yields the lesser percent). The current low concentration level was implemented in accordance with requirements set forth in the Chemical Weapons Convention Implementation Act (CWCIA). Accordingly, publication and implementation of regulatory changes affecting this low concentration exemption level would be contingent upon amendment of the CWCIA by the Congress.

In addition, consistent with U.S. national discretion, BIS is considering amending the CWCRCR reporting requirements for exports and imports of Schedule 3 chemicals by reducing the low concentration exemption that applies to certain mixtures containing Schedule 3 chemicals from the current low concentration level of “less than

80%” of a Schedule 3 chemical by volume or weight (whichever yields the lesser percent) to a concentration of “30% or less.”

DATES: Comments are due August 12, 2011.**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:* wfisher@bis.doc.gov.

Include the phrase “Schedule 3 Notice of Inquiry” in the subject line of the message.

- *Fax:* (202) 482-3355 (Attn: Willard Fisher). Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

- *Mail or Hand Delivery/Courier:*

Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

Send comments regarding the collection of information identified in this notice of inquiry, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to

Jasmeet.K.Seehra@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the notice of inquiry—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: For questions on the CWC requirements for Schedule 3 chemicals, contact Douglas Brown, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, *Phone:* (202) 482-2163. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, *Phone:* (202) 482-2440.

SUPPLEMENTARY INFORMATION:**Background**

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC or “the Convention”), is an international arms control and nonproliferation treaty that established the Organization for the Prohibition of Chemical Weapons

(OPCW) to implement the verification provisions of the treaty. The CWC imposes a number of obligations on countries that have ratified the Convention (States Parties), including enactment of legislation to prohibit the production, storage, and use of chemical weapons, and establishment of a National Authority to liaison with the OPCW and other States Parties. The CWC also requires States Parties to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of States Parties are not engaged in activities prohibited under the CWC.

Part VIII, paragraph 5 of the Verification Annex to the CWC (Schedule 3 Regime) provides that declarations “are generally not required for mixtures containing a low concentration of a Schedule 3 chemical” and that the Conference of the States Parties to the Convention would consider and approve guidelines to establish the appropriate “low concentration” exemption level. Schedule 3 chemicals, as set forth in the Convention’s “Annex on Chemicals,” include those chemicals and precursors identified in the Convention as posing a risk to the object and purpose of the Convention, but less than the “high” or “significant” risk identified in the Convention with regard to Schedule 1 and Schedule 2 chemicals, respectively.

The Department of Commerce, Bureau of Industry and Security (BIS) administers the Chemical Weapons Convention Regulations (CWCRCR) (15 CFR parts 710-722), which implement provisions of the Chemical Weapons Implementation Act of 1998 (CWCIA) (22 U.S.C. 6701 *et seq.*). At the time that the CWCIA was enacted, the OPCW had not yet established guidelines concerning low concentration limits for declarations of Schedule 3 chemicals. In section 402(a)(2) of the CWCIA (22 U.S.C. 6742(a)(2)), Congress set 80% as the concentration of any Schedule 3 chemical in a mixture, below which the CWC’s declaration, reporting and inspection requirements do not apply. Consistent with the CWCIA, the CWCRCR do not require that the quantity of a Schedule 3 chemical contained in a mixture be counted for declaration or reporting purposes if the concentration of the Schedule 3 chemical in the mixture is “less than 80%” by volume or weight, whichever yields the lesser percent.

The declaration and reporting requirements in the CWC that affect commercial activities involving Schedule 3 chemicals are described in

part 714 of the CWC. These CWC provisions:

(1) Require annual declarations by certain facilities (i.e., “declared” Schedule 3 “plant sites”) that were engaged in the production of a Schedule 3 chemical in excess of 30 metric tons during the previous calendar year, or which anticipate engaging in such production in the next calendar year (15 CFR 714.1(a)(1));

(2) Require that the calculation of the quantity of any Schedule 3 chemical that is produced must include the quantities produced in mixtures, if the concentration of the Schedule 3 chemical in the mixture is equal to or greater than 80% by volume or by weight, whichever yields the lesser percent (15 CFR 714.1(a)(3));

(3) Define Schedule 3 chemical production to include all steps in the production of a Schedule 3 chemical in any units within the same plant through chemical reaction, including any associated processes (e.g., purification, separation, extraction, distillation, or refining) in which the chemical is not converted into another chemical (15 CFR 714.1(a)(2));

(4) Provide that all “declared Schedule 3” plant sites are subject to routine inspection by the OPCW (15 CFR 714.1(e)); and

(5) Require persons, plant sites, and trading companies to submit annual reports of exports and imports of any Schedule 3 chemical to, or from, other destinations if the total quantity that was exported or imported exceeded 30 metric tons of a Schedule 3 chemical (15 CFR 714.2(a)).

During the OPCW’s Fifth Session of the Conference of the States Parties to the Convention, which was held in The Hague, Netherlands, on May 19, 2000, the States Parties established guidelines concerning low concentration limits for declarations of Schedule 3 chemicals. Specifically, the States Parties agreed that the Convention’s declaration and reporting requirements would not apply to a chemical mixture in which the concentration of any single Schedule 3 chemical is “30% or less” by volume or weight, whichever yields the lesser percent. This agreement is documented in OPCW decision C-V/DEC.19 and can be obtained from the OPCW Web site (www.opcw.org). Accordingly, if U.S. requirements are to mirror the low concentration exemption level adopted by the OPCW after the enactment of the CWCIA, both statutory and regulatory changes must be implemented.

Discussion and Request for Comments

BIS is seeking public comments on the potential effects of amending the

CWC declaration requirements that apply to the production of Schedule 3 chemicals by reducing the exemption for mixtures containing low concentrations of Schedule 3 chemicals from the current level of “less than 80%” by volume or weight (whichever yields the lesser percent) to a concentration of “30% or less” by volume or weight (whichever yields the lesser percent). These comments will assist BIS in assessing the impact of this change on U.S. persons involved in the production of Schedule 3 chemicals.

Additionally, BIS is seeking public comments on the potential effects of amending the CWC reporting requirements that apply to certain exports and imports of Schedule 3 chemicals by reducing the exemption for mixtures containing low concentrations of Schedule 3 chemicals from the current level of “less than 80%” by volume or weight (whichever yields the lesser percent) to a concentration of “30% or less” by volume or weight (whichever yields the lesser percent).

In particular, BIS seeks comments on the potential impact of these changes on costs, operations, and trade.

Furthermore, BIS is seeking public comments on the anticipated impact of these changes with respect to an existing collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. The changes that are being considered by BIS would revise an existing collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0091 (Chemical Weapons Convention—Declaration and Report Forms), which carries burden hour estimates of 10.6 hours for Schedule 1 Chemicals, 11.9 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3/5.1/5.1 hours for unscheduled discrete organic chemicals (includes Annual Declaration on Past Activities, No Changes Authorization Form, and Change in Inspection Status Form, respectively), and 0.17 hours for Schedule 1 notifications.

Specifically, these changes would affect this approved information collection with respect to information collection activities (e.g., declarations, reports, recordkeeping) involving CWC

Schedule 3 chemicals that are subject to declaration and/or reporting requirements under the CWC. In this regard, BIS is seeking comments that address the anticipated impact of the changes being considered by BIS on the burden hours and costs associated with Schedule 3 chemical activities under this approved information collection.

Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this notice.

Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on August 12, 2011. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

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Dated: July 1, 2011.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2011–17489 Filed 7–12–11; 8:45 am]

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H.R. 2279/P.L. 112-21

Airport and Airway Extension Act of 2011, Part III (June 29, 2011; 125 Stat. 233)

S. 349/P.L. 112-22

To designate the facility of the United States Postal Service located at 4865 Tallmadge Road in Rootstown, Ohio, as

the "Marine Sgt. Jeremy E. Murray Post Office". (June 29, 2011; 125 Stat. 236)

S. 655/P.L. 112-23

To designate the facility of the United States Postal Service located at 95 Dogwood Street in Cary, Mississippi, as the "Spencer Byrd Powers, Jr. Post Office". (June 29, 2011; 125 Stat. 237)

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